**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| In the Matter of: | ) | |
| | ) | |
| Promotion of Competitive Networks | ) | WT Docket No. 99-217 |
| in Local Telecommunications Markets | ) | |
| | ) | |
| Wireless Communications Association | ) | |
| International, Inc. Petition for Rulemaking to | ) | |
| Amend Section 1.4000 of the Commission=s Rules | ) | |
| to Preempt Restrictions on Subscriber Premises | ) | |
| Reception or Transmission Antennas Designed | ) | |
| To Provide Fixed Wireless Services | ) | |
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| Discriminatory and/Or Excessive Taxes | ) | |
| and Assessments | ) | |
| | ) | |
| Implementation of the Local Competition | ) | CC Docket No. 96-98 |
| Provisions in the Telecommunications Act | ) | |
| of 1996 | | |

# COMMENTS OF THE CITY OF CHICAGO

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**NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY**
**in WT Docket No. 99-217, and THIRD FURTHER NOTICE**
**OF PROPOSED RULEMAKING in CC Docket No. 96-98**

COMMENTS OF THE CITY OF CHICAGO

The Federal Communications Commission (the ACommission≅) has requested comments in connection with the Federal Communications Commission Notice of Proposed Rulemaking (the ANPRM≅) and its Notice of Inquiry (the ANOI≅) in the above- captioned dockets.

The following comments by the City of Chicago are made with regard to the NOI with respect to Access to Public Rights of Way and Franchise Fees and the NOI with respect to State and Local Taxes.

Summary of City Position

In the NOI, the Commission expressed certain concerns regarding possible practices of local governments in regulating the public ways which may either serve as a barrier to entry to competitive telecommunication providers or which may unduly burden telecommunications carriers with complex or burdensome requirements as a precondition for access to the streets. The City of Chicago submits that the approach adopted in the State of Illinois as implemented by the City, which has been endorsed by both large segments of the telecommunications industry and local governments, provides certainty and simplicity for accessing public ways, and preserves the rights of local governments to supervise that access and to receive compensation.

Statement of Interest

These comments are filed on behalf of the City as a municipal corporation and on behalf of the 2.7 million people who make the City of Chicago the third largest city in the United States. Chicago, and other local governments in Illinois, have an interest in these proceedings since the State of Illinois has enacted legislation which, in the view of many parties, including the City, strikes the proper balance between the interests of the local governments and the telecommunications industry in providing access to telecommunications companies to the public way while providing fair and reasonable compensation to the local governments.

Background

Following the passage of the Telecommunications Act of 1996 (ATA 1996") and the anticipated increase in demand by competitive new entrants into the local exchange market, local governments in Illinois became increasingly focused on the need to standardize and simplify the process by which competing telecommunications carriers were able to access the public ways. At the same time, large segments of the telecommunications industry expressed their desire to simplify the expensive and time-consuming process of obtaining individual franchises agreements each time they entered a new municipality or amending existing franchises each time the use of the public way was expanded. As a consequence, industry and municipal representatives fashioned a comprehensive state-wide solution. Effective January 1, 1998, the Illinois General Assembly enacted the Infrastructure Maintenance Fee Act ( the≅IMF Act≅). See 35 ICLS 635 et seq. (1998). The IMF Act, attached hereto as Exhibit A, abolishes franchise fees and provides , inter alia, that telecommunication retailers will have a right to access the public way for new construction within 25 days of submitting of complete and satisfactory construction and installation plans (or within 10 days if no new construction is involved), compliance with local requirements of general application for use of the public way and agreement to pay the IMF. The IMF Act also provides for a fee to be paid to local governments (the AIMF≅) which shall not exceed 1% of a telecommunications retailer=s gross charges for telecommunications billed to service addresses in the municipality for all calls originating or terminating in the municipality ( not to exceed 2% for the City of Chicago). No other compensation ( including but not limited to construction permit fees) for use of the public way may be required by any municipality which adopts the IMF Act framework. The IMF percentage rates were arrived at through negotiation and were an attempt to maintain revenue neutrality based on historical franchise fee collection

levels. The IMF Act applies not only to wireline telecommunications providers, but to all wireless service providers as well as resellers of wireless and wireline telecommunication services. The IMF Act itself imposes the IMF on the customers of telecommunications retailers as a separately stated item on the customer=s bills, to be collected by the telecommunications retailer.

Effective January 1, 1998, pursuant to the authority granted to it by the IMF Act, the City of Chicago enacted an ordinance implementing the IMF Act. See Chapters 3-75 and 10-30 of the Municipal Code of Chicago attached hereto as Exhibit B (collectively, the ATelecommunications Ordinance.≅ The Telecommunications Ordinance requires that the City=s Department of Transportation issue a permit authorizing a telecommunications provider to install equipment on, over or under the public ways as long as the such provider pays the IMF and its proposal will not endanger public safety or health. The Telecommunications Ordinance also applies to telecommunications service providers not delivering or sending messages to City addresses but using the City=s public ways, so long as such providers reimburse the City for its actual costs.

In December, 1997, after consultation with telecommunications industry representatives, the City of Chicago issued regulations for use of the public way by telecommunications providers (the ARegulations≅), attached hereto as amended as Exhibit C. The Regulations set forth the uniform standards to be met by telecommunications providers conducting telecommunications activities in the public way, including proof of insurance, a letter of credit and the completion of other procedures to secure approval for the scope of work in the public way and indemnification of the City related to this work. The Regulations also set forth a formula for cost recovery to be paid by telecommunications providers installing facilities in the public way but not delivering or

sending messages to City addresses.

Comments

Illinois= approach to granting providers of telecommunications services access to the public rights of way has three great virtues B it is evenhanded and easy to administer, it guarantees new entrants speedy access to available rights of way, and it imposes an economic burden on those who ultimately benefit from the maintenance of such rights of way B the residents of each locality.

First, the approach taken under the IMF is even-handed. All telecommunications retailers, whether incumbent or new entrants, are treated the same and pay the same percentage fee, regardless of how they conduct their business. Additionally, the IMF does not create an incentive for providers to design telecommunications systems that need no access to public rights of way. All telecommunications retailers, regardless of the technology or network architecture relied upon to conduct telecommunications activity in the public way, are made subject to the IMF Act. As the Commission points out, wireless carriers are unable to carry out their business in a municipality without using the facilities of a wireline carrier, which are located in the public ways. NOI at para.71. (We disagree with the Commission=s statement in the NOI, however, that wireless carriers ought to be charged lower fees than those charged to wireline carriers because wireless carriers allegedly place less of a burden on the public way. See id.) The Illinois General Assembly has made the legislative judgement that it is difficult if not impossible to apportion each provider=s burden on the public ways. Time consuming disputes over the correct fees could also

give rise to unacceptable costs and delays. Moreover, were there to be differential rates, it would be too easy for integrated telecommunications providers to shield revenues from the IMF through divestment of ownership interests in public way facilities to a non-operating entity which receives no retail revenues. Most important, as we explain below, the true burden of the fee falls on consumers, not on wireless providers.

Second, the IMF facilitates enhanced competition in local markets. Permits issue generally within 30 days of an application. Permits can only be denied if the City determines that an applicant=s proposal will endanger public health or safety. New entrants without revenues do not need to pay anything under the IMF until they are receiving revenues from customers. To avoid double application of the IMF, the definition of Agross charges≅ excludes access charges and sales for resale.

Third, the IMF is a fair way to generate revenues that are used to maintain public rights of way. The economic burden of the IMF falls on the customers, not the providers, who in fact receive a 2 % collection fee. The IMF approach, in contrast, places the cost on the customer, who ultimately benefits from the ability of local governments to maintain the public way. The purpose of the IMF Act in the end is to provide compensation to local governments for telecommunications activity in the public way, which is not limited to the burden placed on the public ways. This purpose codifies historical principles of franchise law.

To date, the IMF Ordinance has been very successful in Chicago. According to recent figures from the City=s Department of Revenue, approximately 920 telecommunications providers have registered with the City under the IMF Ordinance and twelve

telecommunications providers have located facilities in the public way under the IMF Ordinance. The average time for processing and either approval or denial of request for location of facilities in the public way averages four to five weeks compared to a period of months prior to the adoption of the IMF Ordinance. One primary reason is that the IMF Act itself imposes few additional administrative burdens on telecommunications carriers because its structure is very similar to the municipal telecommunications excise tax that was previously in effect. While the Regulations are detailed, any telecommunications carrier can follow them and, assuming space is available and the preconditions are met, gain access to the public way.

Litigation

It should be noted that two lawsuits have been filed in state court challenging the lawfulness of the IMF Act. The City of Chicago is involved in both cases and believe the legal challenges are without merit.

The first case is Wexler, et al v. Ameritech , the City of Chicago, et al., 98 CH 001282. This lawsuit is attempting to obtain class action status with two taxpayers as named plaintiffs. Among other claims, the plaintiffs allege that the imposition of the IMF constitutes unlawful double taxation in violation of Article IX, Section 7 of the Illinois Constitution and the due process clauses of the Illinois Constitution (Article I, Section 2) and the U.S. Constitution (14th Amendment). This case was dismissed for failure to state a claim with leave to file an amended complaint. The plaintiffs have filed an amended complaint and the City of Chicago=s new motion to dismiss is pending.

The second case is PrimeCo Personal Communications, L.P., et al. V. Illinois Commerce

Commission and the City of Chicago, 98 CH 05500. In this case, certain wireless telecommunications providers allege that the IMF Act violates the uniformity clause of Article IX, Section 2 of the Illinois Constitution because, inter alia, they are treated in the same manner as wireline telecommunications providers, despite the allegation that they do not own any facilities located in the public way. In response, the City of Chicago submits that by enacting the IMF, the Illinois General Assembly made the reasonable legislative judgement that all telecommunications retailers and their customers benefit from a single, unified and interconnected network.

Conclusion: For the foregoing reasons, the City of Chicago provides the foregoing comments.

**EXHIBIT A**

## PART 1.

## TELECOMMUNICATIONS MUNICIPAL INFRASTRUCTURE

## MAINTENANCE FEE ACT (CURRENT VERSION)

(35 ILCS 635/1)

Sec. 1. Short title. This Act may be cited as the Telecommunications Municipal Infrastructure Maintenance Fee Act. (Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/5)

Sec. 5. Legislative intent. The General Assembly imposed a tax on invested capital of utilities to partially replace the personal property tax that was abolished by the Illinois Constitution of 1970. Since that tax was imposed, telecommunications retailers have evolved from utility status into an increasingly competitive industry serving the public. This Act is intended to abolish the invested capital tax on telecommunications retailers (that is, persons engaged in the business of transmitting messages and acting as a retailer of telecommunications as defined in Section 2 of the Telecommunications Excise Tax Act. Cellular Telecommunications retailers have already been excluded from application of the invested capital tax by earlier legislative action. This Act is also intended to abolish municipal franchise fees with respect to telecommunications retailers, create a uniform system for the collection and distribution of fees associated with the privilege of use of the public right of way for telecommunications activity, and provide municipalities with a comprehensive method of compensation for telecommunications activity including the recovery of reasonable costs of regulating the use of the public rights-of-way for telecommunications

activity.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/10)

Sec. 10. Definitions.

(a) "Gross charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State or the municipality imposing the fee under this Act, as the context requires, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State or the municipality imposing the fee under this Act, charges for the channel mileage between each channel point within this State or the municipality imposing the fee under this Act, and charges for that portion of the interstate inter-office channel provided within Illinois or the municipality imposing the fee under this Act. However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) charges for a sent collect telecommunication received outside of this State or the municipality imposing the fee, as the context requires;

(3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement.

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs or by the municipality imposing the fee under the Act, as the context requires;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(8) charges paid by inserting coins in coin-operated telecommunication devices; or

(9) charges for telecommunications and all services and equipment provided to a municipality imposing the infrastructure maintenance fee.

(a-5) "Department" means the Illinois Department of Revenue.

(b) "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end

communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(c) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104) as now or hereafter amended, including all commercial mobile radio services, and paging services.

(d) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Illinois Department of Revenue or the municipality imposing the fee, as the case may be, may, in its discretion, upon applications, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department or municipality, furnishes adequate security to insure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the State or municipality imposing the fee.

(e) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(f) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to

the retailer for their use or consumption and not for sale.

(g) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97.)

(35 ILCS 635/15)

Sec. 15. State telecommunications infrastructure maintenance fees.

(a) A State infrastructure maintenance fee is hereby imposed upon telecommunications retailers as a replacement for the personal property tax in an amount specified in subsection (b).

(b) The amount of the State infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall be equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) An optional infrastructure maintenance fee is hereby created. A telecommunications retailer may elect to pay the optional infrastructure maintenance fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality if (1) the telecommunications retailer is not required to pay any compensation to the municipality under an existing franchise agreement and (2) the municipality has not imposed a municipal infrastructure maintenance fee as authorized in Section 20 of this Act. A telecommunications retailer electing to pay the optional infrastructure maintenance fee shall notify the Department of such election on the application for certificate of registration. If a telecommunications retailer elects to pay this fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality, such election shall remain in full force and effect until such time as the municipality imposes a municipal infrastructure maintenance fee.

(d) The amount of the optional infrastructure maintenance fee which a telecommunications retailer may elect to pay with respect to a

particular municipality shall be equal to 25% of the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.

(e) The State infrastructure maintenance fee and the optional infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in subsection (b) of Section 25 of this Act.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97.)

(35 ILCS 635/20)

Sec. 20. Municipal telecommunications infrastructure maintenance fee.

(a) A municipality may impose a municipal infrastructure maintenance fee upon telecommunications retailers in an amount specified in subsection (b). On and after the effective date of this amendatory Act of 1997, a certified copy of an ordinance or resolution imposing a fee under this Section shall be filed with the Department within 30 days after the effective date of this amendatory Act or the effective date of the ordinance or resolution imposing such fee, whichever is later. Failure to file a certified copy of the ordinance or resolution imposing a fee under this Section shall have no effect on the validity of the ordinance or resolution. The Department shall create and maintain a list of all ordinances and resolutions filed pursuant to this Section and make that list, as well as copies of the ordinances and resolutions, available to the public for a reasonable fee.

(b) The amount of the municipal infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall not exceed: (i) in a municipality with a population of more than 500,000, 2.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality; and (ii) in a municipality with a population of 500,000 or less, 1.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality. If imposed, the municipal telecommunications infrastructure fee must be in 1/4% increments. However, the fee shall not be imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) The municipal telecommunications infrastructure fee authorized by this Section shall be collected, enforced, and administered as set forth in subsection (c) of Section 25 of this Act.

(Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97.)

(35 ILCS 635/22)

Sec. 22. Certificates. It shall be unlawful for any person to engage in business as a telecommunications retailer in this State within the meaning of this Act without first having obtained a certificate of registration to do so from the Department. Application for the certificate shall be made to the Department in a form prescribed and furnished by the Department. Each applicant for a certificate shall furnish to the Department on a form prescribed by the Department and signed by the applicant under penalties of perjury, the following information:

(1) The name of the applicant.

(2) The address of the location at which the applicant proposes to engage in business as a telecommunications retailer in this State.

(3) Other information the Department may reasonably require.

The Department, upon receipt of an application in proper form, shall issue to the applicant a certificate, in a form prescribed by the Department, which shall permit the applicant to whom it is issued to engage in business as a telecommunications retailer at the place shown on his or her application. No certificate issued under this Act is transferable or assignable. No certificate shall be issued to any person who is in default to the State of Illinois for moneys due under this Act or any other tax Act administered by the Department. Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

The Department may, in its discretion, upon application, authorize the payment of the fees imposed under this Act by any telecommunications retailer not otherwise subject to the fees imposed under this Act who, to the satisfaction of the Department, furnishes adequate security to ensure payment of the fees. The telecommunications retailer shall be issued, without charge, a certificate to remit the fees. When so authorized, it shall be the duty of the telecommunications retailer to remit the fees imposed upon the gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications in the same manner and subject to the same requirements as a telecommunications retailer operating within this State.

(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/24)

Sec. 24. Certificate actions. The Department may, after notice and a hearing, revoke, cancel, or suspend the certificate of registration of any telecommunications retailer who violates any of the provisions of this Act or regulations promulgated thereunder. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based.

The Department may, after notice and a hearing as provided herein, revoke the certificate of registration of any person who violates any of the provisions of this Act. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any hearing held under this Section shall be conducted by the Director of Revenue or by any officer or employee of the Department designated, in writing, by the Director of Revenue. Upon the hearing of any such proceeding, the Director of Revenue, or any officer or employee of the Department designated, in writing, by the Director of Revenue, may administer oaths and the Department may procure by its subpoena the attendance of witnesses and, by its subpoena duces tecum, the production of relevant books and papers. Any circuit court, upon application either of the accused or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers, before the Department in any hearing relating to the revocation of certificates of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience thereof by proceedings for contempt. The Department may, by application to any circuit court, obtain an injunction restraining any person who engages in business as a telecommunications retailer without a certificate (either because his or her certificate has been revoked, canceled, or suspended or because of a failure to obtain a certificate in the first instance) from engaging in that business until that person, as if that person were a new applicant for a certificate, complies with all of the conditions, restrictions, and requirements of Section 22 of this Act and qualifies for and obtains a certificate. Refusal or neglect to obey the order of the court may result in punishment for contempt.

(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/25)

Sec. 25. Collection, enforcement, and administration of

telecommunications infrastructure maintenance fees.

(a) A telecommunications retailer shall charge each customer an additional charge equal to the sum of (1) an amount equal to the State infrastructure maintenance fee attributable to that customer's service address and (2) an amount equal to the optional infrastructure maintenance fee, if any, attributable to that customer's service address and (3) an amount equal to the municipal infrastructure maintenance fee, if any, attributable to that customer's service address. Such additional charge shall be shown separately on the bill to each customer.

(b) The State infrastructure maintenance fee and the optional infrastructure maintenance fee shall be designated as a replacement for the personal property tax and shall be remitted by the telecommunications retailer to the Illinois Department of Revenue; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the State infrastructure maintenance fee and the optional infrastructure maintenance fee, if any, paid to the Department, with a timely paid and timely filed return to reimburse itself for expenses incurred in collecting, accounting for, and remitting the fee. All amounts herein remitted to the Department shall be transferred to the Personal Property Tax Replacement Fund in the State Treasury.

(c) The municipal infrastructure maintenance fee shall be remitted by the telecommunications retailer to the municipality imposing the municipal infrastructure maintenance fee; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the municipal infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. The municipality imposing the municipal infrastructure maintenance fee shall collect, enforce, and administer the fee.

(d) Except as provided in subsection (e), during any period of time when a municipality receives any compensation other than the municipal infrastructure maintenance fee set forth in Section 20, for a telecommunications retailer's use of the public right-of-way, no municipal infrastructure maintenance fee may be imposed by such municipality pursuant to this Act.

(e) A municipality that, pursuant to a franchise agreement in existence on the effective date of this Act, receives compensation from a telecommunications retailer for the use of the public right of way, may impose a municipal infrastructure maintenance fee pursuant to this Act only on the condition that such municipality (1) waives its right to receive all fees, charges and other compensation under all existing franchise agreements or the like with telecommunications retailers

during the time that the municipality imposes a municipal infrastructure maintenance fee and (2) imposes by ordinance (or other proper means) a municipal infrastructure maintenance fee which becomes effective no sooner than 90 days after such municipality has provided written notice by certified mail to each telecommunications retailer with whom the municipality has an existing franchise agreement, that the municipality waives all compensation under such existing franchise agreement. (Source: P.A. 90-154, eff. 1-1-98; 90-562, eff. 12-16-97; 90-655, eff. 7-30-98.)

(35 ILCS 635/27)

Sec. 27. Returns by telecommunications retailer; extensions. Except as provided hereinafter in this Section, on or before the 30th day of each month each telecommunications retailer maintaining a place of business in this State shall make a return and payment of fees to the Department for the preceding calendar month on a form prescribed and furnished by the Department. The return shall be signed by the telecommunications retailer under penalties of perjury and shall contain the following information:

1. His or her name;

2. The address of his or her principal place of business, and the address of the principal place of business (if that is a different address) from which he or she engages in the business of transmitting telecommunications;

3. The total amount of gross charges charged by him or her during the preceding calendar month for providing telecommunications during such calendar month;

4. The total amount received by him or her during the preceding calendar month on credit extended;

5. Deductions allowed by law;

6. Gross charges that were charged by him or her during the preceding calendar month and upon the basis of which the State infrastructure maintenance fee is imposed;

7. Gross charges that were charged by him or her during the preceding calendar month and upon the basis of which the optional infrastructure maintenance fee, if any, is imposed for each particular municipality;

8. Amounts of fees due;

9. Such other reasonable information as the Department may require.

If the telecommunications retailer's average monthly liability to the Department does not exceed $100, the Department may authorize his or her returns to be filed on a quarter annual basis, with the return for

January, February, and March of a given year being due by April 15 of such year; with the return for April, May, and June of a given year being due by July 15 of such year; with the return for July, August, and September of a given year being due by October 15 of such year; and with the return of October, November, and December of a given year being due by January 15 of the following year.

Notwithstanding any other provision of this Act concerning the time within which a telecommunications retailer may file his or her return, in the case of any telecommunications retailer who ceases to engage in a kind of business which makes him or her responsible for filing returns under this Act, such telecommunications retailer shall file a final return under this Act with the Department not more than one month after discontinuing such business.

In making such return, the telecommunications retailer shall determine the value of any consideration other than money received by him or her and he or she shall include such value in his or her return. Such determination shall be subject to review and revision by the Department in the manner hereinafter provided for the correction of returns.

If any payment provided for in this Section exceeds the telecommunications retailer's liabilities under this Act, as shown on an original monthly return, the Department may authorize the telecommunications retailer to credit such excess payment against liability subsequently to be remitted to the Department under this Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the telecommunications retailer, the telecommunications retailer's 2% discount shall be reduced by 2% of the difference between the credit taken and that actually due, and that telecommunications retailer shall be liable for penalties and interest on such difference.

If the Director finds that the information required for the making of an accurate return cannot reasonably be compiled by a telecommunications retailer within 15 days after the close of the calendar month for which a return is to be made, he or she may grant an extension of time for the filing of such return for a period of not to exceed 31 calendar days. The granting of such an extension may be conditioned upon the deposit by the telecommunications retailer with the Department of an amount of money not exceeding the amount estimated by the Director to be due with the return so extended. All such deposits, including any heretofore made with the Department, shall be credited against the telecommunications retailer's liabilities under this Act. If any such deposit exceeds the telecommunications retailer's present and

probable future liabilities under this Act, the Department shall issue to the telecommunications retailer a credit memorandum, which may be assigned by the telecommunications retailer to a similar telecommunications retailer under this Act, in accordance with reasonable rules and regulations to be prescribed by the Department.

Any telecommunications retailer required to make payments under this Section may make the payments by electronic funds transfer. The Department shall adopt rules necessary to effectuate a program of electronic funds transfer.

(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.5)

Sec. 27.5. Books and Records. Every telecommunications retailer under this Act shall keep books, records, papers, and other documents that are adequate to reflect the information which such telecommunications retailers are required by this Act to report to the Department by filing monthly returns with the Department. All books and records and other papers and documents required by this Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. Books and records reflecting gross charges received during any period with respect to which the Department is authorized to establish liability as provided by this Act shall be preserved until the expiration of such period unless the Department, in writing, authorizes their destruction or disposal at an earlier date.

The Department may, upon written authorization of the Director, destroy any returns or any records, papers, or memoranda pertaining to such returns upon the expiration of any period covered by such returns with respect to which the Department is authorized to establish liability.

(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.10)

Sec. 27.10. Investigations and hearings. For the purpose of administering and enforcing the provisions of this Act, the Department or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered by this Act and may examine any books, papers, records, or memoranda bearing upon the business transacted by any such telecommunications retailer and may require the attendance of such telecommunications retailer or any officer or employee of such telecommunications retailer, or of any person having knowledge of such

business, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Department nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the Department. The Director or any officer or employee thereof shall have power to administer oaths to any such persons. The books, papers, records, and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation, or legal proceeding by a reproduced copy thereof under the certificate of the Director. Such reproduced copy shall without further proof, be admitted into evidence before the Department or in any legal proceeding.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.15)

Sec. 27.15. Incriminating evidence; immunity; perjury. No person shall be excused from testifying or from producing any books, papers, records, or memoranda in any investigation or upon any hearing, when ordered to do so by the Department or any officer or employee thereof, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or her or subject him or her to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the Department or any officer or employee thereof; provided, that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.20)

Sec. 27.20. Subpoenas; witness fees; depositions. The Department or any officer or employee of the Department designated, in writing, by the Director thereof, shall at its or his or her own instance, or on the written request of any party to the proceeding, issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas issued under this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit

court of this State; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any telecommunications retailer to any such proceeding the Department may require that the cost of service of the subpoena and the fee of the witness be borne by the telecommunications retailer at whose instance the witness is summoned. In such case, the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court.

Any circuit court of this State, upon the application of the Department or any officer or employee thereof may, in its discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

The Department or any officer or employee thereof, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and, to that end, compel the attendance of witnesses and the production of books, papers, records, or memoranda. (Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.25)

Sec. 27.25. Confidential information; exceptions. All information received by the Department from returns filed under this Act, or from any investigations conducted under this Act, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class B misdemeanor.

Provided, that nothing contained in this Act shall prevent the Director from publishing or making available to the public the names and addresses of telecommunications retailers filing returns under this Act, or from publishing or making available reasonable statistics concerning the operation of the fees wherein the contents of returns are grouped into aggregates in such a way that the information contained in any individual return shall not be disclosed.

And provided, that nothing contained in this Act shall prevent the Director from making available to the United States Government or any officer or agency thereof, for exclusively official purposes, information received by the Department in the administration of this Act.

The furnishing upon request of the Auditor General, or his or her authorized agents, for official use, of returns filed and information related thereto under this Act is deemed to be an official purpose within the meaning of this Section.

The Director may make available to any State agency, including the Illinois Supreme Court, which licenses persons to engage in any occupation, information that a person licensed by such agency has failed to file returns under this Act or pay the fees, penalty, and interest shown therein, or has failed to pay any final assessment of fees, penalty, or interest due under this Act. An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 1998. These decisions are to be made available in a manner so that the following taxpayer information is not disclosed:

(1) The names, addresses, and identification numbers of the taxpayer, related entities, and employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer, no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication an administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in Section 3-101 of Article III of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.30)

Sec. 27.30. Review under Administrative Review Law. The Circuit

Court of the county wherein a hearing is held shall have power to review all final administrative decisions of the Department in administering the provisions of this Act: Provided that if the administrative proceeding that is to be reviewed judicially is a claim for refund proceeding commenced in accordance with this Act and Section 2a of the State Officers and Employees Money Disposition Act, the Circuit Court having jurisdiction of the action for judicial review under this Section and under the Administrative Review Law shall be the same court that entered the temporary restraining order or preliminary injunction that is provided for in Section 2a of the State Officers and Employees Money Disposition Act and that enables such claim proceeding to be processed and disposed of as a claim for refund proceeding rather than as a claim for credit proceeding.

The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Service upon the Director or Assistant Director of the Department of Revenue of summons issued in any action to review a final administrative decision shall be service upon the Department. The Department shall certify the record of its proceedings if the telecommunications retailer shall pay to it the sum of 754 per page of testimony taken before the Department and 254 per page of all other matters contained in such record, except that these charges may be waived where the Department is satisfied that the aggrieved party is a poor person who cannot afford to pay such charges.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.35)

Sec. 27.35. Rules and regulations; notice to telecommunications retailer; hearings. The Department may make, promulgate, and enforce such reasonable rules and regulations relating to the administration and enforcement of only the State infrastructure maintenance fee and the optional infrastructure maintenance fee authorized by this Act. Such rules and regulations shall not apply to the administration and enforcement of the municipal infrastructure maintenance fee authorized by this Act.

Whenever notice to a telecommunications retailer is required by this Act, such notice may be given by United States certified or registered mail, addressed to the telecommunications retailer concerned at his or her last known address, and proof of such mailing shall be sufficient for the purposes of this Act. In the case of a notice of hearing, such

notice shall be mailed not less than 7 days prior to the day fixed for the hearing.

All hearings provided for in this Act with respect to a telecommunications retailer having his or her principal place of business other than in Cook County shall be held at the Department's office nearest to the location of the telecommunications retailer's principal place of business: Provided that if the telecommunications retailer has his or her principal place of business in Cook County, such hearing shall be held in Cook County; and provided further that if the telecommunications retailer does not have his principal place of business in this State, such hearings shall be held in Sangamon County.

Whenever any proceeding provided by this Act has been begun by the Department or by a person subject thereto and such person thereafter dies or becomes a person under legal disability before the proceeding has been concluded, the legal representative of the deceased person or a person under legal disability shall notify the Department of such death or legal disability. The legal representative, as such, shall then be substituted by the Department in place of and for the person. Within 20 days after notice to the legal representative of the time fixed for that purpose, the proceeding may proceed in all respects and with like effect as though the person had not died or become a person under legal disability.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.40)

Sec. 27.40. Application of Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Revenue under this Act, except that (i) paragraph (b) of Section 5-10 of the Administrative Procedure Act does not apply to final orders, decisions, and opinions of the Department, (ii) subparagraph (a)(ii) of Section 5-10 of the Administrative Procedure Act does not apply to forms established by the Department for use under this Act, and (iii) the provisions of Section 10-45 of the Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Act.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.45)

Sec. 27.45. Failure to make a return. Any telecommunications retailer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Act or any rule or regulation of the Department for the administration and enforcement of

this Act, is guilty of a business offense and, upon conviction thereof, shall be fined not less than $1,000 nor more than $7,500.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.50)

Sec. 27.50. Additional fees. The fees herein imposed shall be in addition to all other occupation or privilege taxes or fees imposed by the State of Illinois or by any municipal corporation or political subdivision thereof.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/27.55)

Sec. 27.55. Applicability of Retailers' Occupation Tax Act and Uniform Penalty and Interest Act. All of the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, and 6c of the Retailers' Occupation Tax Act that are not inconsistent with this Act, and all provisions of the Uniform Penalty and Interest Act shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean persons engaged in the business of transmitting messages when used in this Act. References in the incorporated Sections of the Retailers' Occupation Tax Act to purchasers of tangible personal property mean purchasers of the service of transmitting messages when used in this Act. References in the incorporated Sections of the Retailers' Occupation Tax Act to sales of tangible personal property mean the transmitting of messages when used in this Act. References to "taxes" in these incorporated Sections shall be construed to apply to the administration, payment, and remittance of all fees under this Act.
(Source: P.A. 90-562, eff. 12-16-97.)

(35 ILCS 635/30)

Sec. 30. Validity of existing franchise fees and agreements.

(a) Upon the effective date of this Act, the municipal infrastructure maintenance fee authorized by this Act shall be the only fee or compensation for recovering the reasonable costs of regulating the use of the public rights-of-way and for the use of public rights-of-way that may be levied by or otherwise required by ordinance, resolution, or contract to be paid to a municipality for the use of its public way by telecommunications retailers. No new fees shall be imposed upon or other charges required from telecommunications retailers by municipalities from and after the effective date of this Act. No

telecommunications retailer paying either the applicable municipal infrastructure maintenance fee or the optional infrastructure maintenance fee authorized by this Act may be denied the use, directly or indirectly, of the public way of the municipality either imposing the municipal infrastructure maintenance fee or to which the optional infrastructure maintenance fee relates, as the case may be, as authorized under the Telephone Company Act. Nothing in this Act shall excuse any person or entity from obligations imposed under any law concerning generally applicable taxes or standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public way, nor shall any person or entity be excused from any liability imposed by any such law for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way.

(b) Agreements between telecommunications retailers and municipalities entered into before the effective date of this Act regarding use of the public ways shall remain valid according to and for their stated terms. If, following the effective date of this Act, such an agreement is renewed automatically or by agreement of the parties, the compensation or fee under the agreement shall be equal to the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.

(c) The regulation of the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers shall be committed exclusively to the jurisdiction of the Illinois Commerce Commission and the Federal Communications Commission, and such regulation shall not be among the home rule powers and functions described in subsection (h) of Section 6 of Article VII of the Illinois Constitution. Moreover, no municipality may enter into any contract or agreement with a telecommunications retailer with respect to the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/35)

Sec. 35. Home rule. The authorization of infrastructure maintenance fees and other fees relating to the use of the public right-of-way for telecommunications activity imposed upon telecommunications retailers is an exclusive power and function of the State. A home rule municipality may not impose franchise or other fees

upon or require other compensation from telecommunications retailers for use of the public way, other than the municipal infrastructure maintenance fee authorized by this Act. This Act is a denial and limitation of municipal home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/40)
Sec. 40. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of the provision or application does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/905)
Sec. 905. The Messages Tax Act is amended by repealing Section 2a.1.
(Source: P.A. 90-154, eff. 1-1-98.)

(35 ILCS 635/910)
Sec. 910. (Amendatory provisions; text omitted).
(Source: P.A. 90-154, eff. 1-1-98; text omitted.)

(35 ILCS 635/915)
Sec. 915. (Amendatory provisions; text omitted.)
(Source: P.A. 90-154, eff. 1-1-98; text omitted.)

(35 ILCS 635/920)
Sec. 920. (Amendatory provisions; text omitted.)
(Source: P.A. 90-154, eff. 1-1-98; text omitted.)

## PART 2.
## ORIGINAL TELECOMMUNICATIONS MUNICIPAL INFRASTRUCTURE MAINTENANCE FEE ACT (INCLUDING AMENDATORY PROVISIONS)

**P.A. 90-154**

AN ACT concerning telecommunications.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

(35 ILCS 635/1)

Section 1. Short title. This Act may be cited as the Telecommunications Municipal Infrastructure Maintenance Fee Act.

(35 ILCS 635/5)

Section 5. Legislative intent. The General Assembly imposed a tax on invested capital of utilities to partially replace the personal property tax that was abolished by the Illinois Constitution of 1970. Since that tax was imposed, telecommunications retailers have evolved from utility status into an increasingly competitive industry serving the public. This Act is intended to abolish the invested capital tax on telecommunications retailers (that is, persons engaged in the business of transmitting messages and acting as a retailer of telecommunications as defined in Section 2 of the Telecommunications Excise Tax Act. Cellular Telecommunications retailers have already been excluded from application of the invested capital tax by earlier legislative action. This Act is also intended to abolish municipal franchise fees with respect to telecommunications retailers, create a uniform system for the collection and distribution of fees associated with the privilege of use of the public right of way for telecommunications activity, and provide municipalities with a comprehensive method of compensation for telecommunications activity including the recovery of reasonable costs of regulating the use of the public rights-of-way for telecommunications activity.

(35 ILCS 635/10)

Section 10. Definitions.

(a) "Gross charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in this State or the municipality imposing the fee under this Act, as the context requires, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State or the municipality imposing the fee under this Act, charges for the channel mileage between each channel point within this State or the municipality imposing

the fee under this Act, and charges for that portion of the interstate inter-office channel provided within Illinois or the municipality imposing the fee under this Act.

However, "gross charges" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) charges for a sent collect telecommunication received outside of this State or the municipality imposing the fee, as the context requires;

(3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement.

(4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs or by the municipality imposing the fee under the Act, as the context requires;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

(7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);

(8) charges paid by inserting coins in coin-operated telecommunication devices; or

(9) charges for telecommunications and all services and equipment provided to a municipality imposing the infrastructure maintenance fee.

(b) "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(c) "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104) as now or hereafter amended, including all commercial mobile radio services, and paging services.

(d) "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Illinois Department of Revenue or the municipality imposing the fee, as the case may be, may, in its discretion, upon applications, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department or municipality, furnishes adequate security to insure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the State or municipality imposing the fee.

(e) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office,

distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(f) "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(g) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(35 ILCS 635/15)

Section 15. State telecommunications infrastructure maintenance fees.

(a) A State infrastructure maintenance fee is hereby imposed upon telecommunications retailers as a replacement for the personal property tax in an amount specified in subsection (b).

(b) The amount of the State infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall be equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) An optional infrastructure maintenance fee is hereby created. A telecommunications retailer may elect to pay the optional infrastructure maintenance fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality if (1) the telecommunications retailer is not required to pay any compensation to the municipality under an existing franchise agreement and (2) the municipality has not imposed a municipal infrastructure maintenance fee as authorized in Section 20 of this Act. If a telecommunications retailer elects to pay this fee with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality, such election shall remain in full force and effect until such time as the municipality imposes a municipal

infrastructure maintenance fee.

(d) The amount of the optional infrastructure maintenance fee which a telecommunications retailer may elect to pay with respect to a particular municipality shall be equal to 25% of the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.

(e) The State infrastructure maintenance fee and the optional infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 25 of this Act.

(35 ILCS 635/20)

Section 20. Municipal telecommunications infrastructure maintenance fee.

(a) A municipality may impose a municipal infrastructure maintenance fee upon telecommunications retailers in an amount specified in subsection (b).

(b) The amount of the municipal infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall not exceed: (i) in a municipality with a population of more than 500,000, 2.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality; and (ii) in a municipality with a population of 500,000 or less, 1.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality. If imposed, the municipal telecommunications infrastructure fee must be in 1/4 % increments. However, the fee shall not be imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

(c) The municipal telecommunications infrastructure fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 25 of this Act.

(35 ILCS 635/25)

Section 25. Collection, enforcement, and administration of telecommunications infrastructure maintenance fees.

(a) A telecommunications retailer shall charge each customer an additional charge equal to the sum of (1) an amount equal to the State infrastructure maintenance fee attributable to that customer's service address and (2) an amount equal to the optional infrastructure maintenance fee, if any, attributable to that customer's service address and (3) an amount equal to the municipal infrastructure maintenance fee, if any, attributable to that customer's service address. Such

additional charge shall be shown separately on the bill to each customer.

(b) The State infrastructure maintenance fee and the optional infrastructure maintenance fee shall be designated as a replacement for the personal property tax and shall be remitted by the telecommunications retailer to the Illinois Department of Revenue; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the State infrastructure maintenance fee and the optional infrastructure maintenance fee, if any, collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. All amounts herein remitted to the Department shall be transferred to the Personal Property Tax Replacement Fund in the State Treasury.

(c) The municipal infrastructure maintenance fee shall be remitted by the telecommunications retailer to the municipality imposing the municipal infrastructure maintenance fee; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the municipal infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. The municipality imposing the municipal infrastructure maintenance fee shall collect, enforce, and administer the fee.

(d) Amounts paid under this Act by telecommunications retailers shall not be included in the tax base under any of the following Acts as described immediately below:

(1) "gross charges" for purposes of the Telecommunications Excise Tax Act;

(2) "gross receipts" for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;

(3) "gross charge" for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;

(4) "gross revenue" for purposes of the tax on annual gross revenue of public utilities as prescribed in Section 2-202 of the Public Utilities Act.

(e) Except as provided in subsection (f), during any period of time when a municipality receives any compensation other than the municipal infrastructure maintenance fee set forth in Section 20, for a telecommunications retailer's use of the public right-of-way, no municipal infrastructure maintenance fee may be imposed by such municipality pursuant to this Act.

(f) A municipality that, pursuant to a franchise agreement in existence on the effective date of this Act, receives compensation from a telecommunications retailer for the use of the public right of way, may impose a municipal infrastructure maintenance fee pursuant to this Act only on the condition that such municipality (1) waives its right to receive all fees, charges and other compensation under all existing franchise agreements or the like with telecommunications retailers during the time that the municipality imposes a municipal infrastructure maintenance fee and (2) imposes by ordinance (or other proper means) a municipal infrastructure maintenance fee which

becomes effective no sooner than 90 days after such municipality has provided written notice by certified mail to each telecommunications retailer with whom the municipality has an existing franchise agreement, that the municipality waives all compensation under such existing franchise agreement.

(35 ILCS 635/30)

Section 30. Validity of existing franchise fees and agreements.

(a) Upon the effective date of this Act, the municipal infrastructure maintenance fee authorized by this Act shall be the only fee or compensation for recovering the reasonable costs of regulating the use of the public rights- of-way and for the use of public rights-of-way that may be levied by or otherwise required by ordinance, resolution, or contract to be paid to a municipality for the use of its public way by telecommunications retailers. No new fees shall be imposed upon or other charges required from telecommunications retailers by municipalities from and after the effective date of this Act. No telecommunications retailer paying either the applicable municipal infrastructure maintenance fee or the optional infrastructure maintenance fee authorized by this Act may be denied the use, directly or indirectly, of the public way of the municipality either imposing the municipal infrastructure maintenance fee or to which the optional infrastructure maintenance fee relates, as the case may be, as authorized under the Telephone Company Act. Nothing in this Act shall excuse any person or entity from obligations imposed under any law concerning generally applicable taxes or standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public way, nor shall any person or entity be excused from any liability imposed by any such law for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way.

(b) Agreements between telecommunications retailers and municipalities entered into before the effective date of this Act regarding use of the public ways shall remain valid according to and for their stated terms. If, following the effective date of this Act, such an agreement is renewed automatically or by agreement of the parties, the compensation or fee under the agreement shall be equal to the maximum amount of the municipal infrastructure maintenance fee which the municipality could impose under Section 20 of this Act.

(c) The regulation of the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers shall be committed exclusively to the jurisdiction of the Illinois Commerce Commission and the Federal Communications Commission, and such regulation shall not be among the home rule powers and functions described in subsection (h) of Section 6 of Article VII of the Illinois Constitution. Moreover, no municipality may enter into any contract or agreement with a telecommunications

retailer with respect to the terms and conditions upon which poles, conduits, and other facilities located in the public way may be shared by or between telecommunications retailers.

(35 ILCS 635/35)

Section 35. Home rule. The authorization of infrastructure maintenance fees and other fees relating to the use of the public right-of-way for telecommunications activity imposed upon telecommunications retailers is an exclusive power and function of the State. A home rule municipality may not impose franchise or other fees upon or require other compensation from telecommunications retailers for use of the public way, other than the municipal infrastructure maintenance fee authorized by this Act. This Act is a denial and limitation of municipal home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(35 ILCS 635/40)

Section 40. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of the provision or application does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application.

(35 ILCS 610/2a.1 repealed)

Section 905. The Messages Tax Act is amended by repealing Section 2a.1.

Section 910. The State Revenue Sharing Act is amended by changing Section 12 as follows:

(30 ILCS 115/12)

Sec. 12. Personal Property Tax Replacement Fund. There is hereby created the Personal Property Tax Replacement Fund, a special fund in the State Treasury into which shall be paid all

revenue realized:

(a) all amounts realized from the additional personal property tax replacement income tax imposed by subsections (c) and (d) of Section 201 of the Illinois Income Tax Act, except for those amounts deposited into the Income Tax Refund Fund pursuant to subsection (c) of Section 901 of the Illinois Income Tax Act; and

(b) all amounts realized from the additional personal property replacement invested capital taxes imposed by Section 2a.1 of the Messages Tax Act, Section 2a.1 of the Gas Revenue Tax Act, Section 2a.1 of the Public Utilities Revenue Act, and Section 3 of the Water Company Invested Capital Tax Act, and amounts payable to the Department of Revenue under the Telecommunications Municipal Infrastructure Maintenance Act.

As soon as may be after the end of each month, the Department of Revenue shall certify to the Treasurer and the Comptroller the amount of all refunds paid out of the General Revenue Fund through the preceding month on account of overpayment of liability on taxes paid into the Personal Property Tax Replacement Fund. Upon receipt of such certification, the Treasurer and the Comptroller shall transfer the amount so certified from the Personal Property Tax Replacement Fund into the General Revenue Fund.

The payments of revenue into the Personal Property Tax Replacement Fund shall be used exclusively for distribution to taxing districts as provided in this Section, payment of the expenses of the Department of Revenue incurred in administering the collection and distribution of monies paid into the Personal Property Tax Replacement Fund and transfers due to refunds to taxpayers for overpayment of liability for taxes paid into the Personal Property Tax Replacement Fund.

As soon as may be after the effective date of this amendatory Act of 1980, the Department of Revenue shall certify to the Treasurer the amount of net replacement revenue paid into the General Revenue Fund prior to that effective date from the additional tax imposed by Section 2a.1 of the Messages Tax Act; Section 2a.1 of the Gas Revenue Tax Act; Section 2a.1 of the Public Utilities Revenue Act; Section 3 of the Water Company Invested Capital Tax Act; amounts collected by the Department of Revenue under the Telecommunications Municipal Infrastructure Maintenance Fee Act; and the additional personal property tax replacement income tax imposed by the Illinois Income Tax Act, as amended by Public Act 81-1st Special Session-1. Net replacement revenue shall be defined as the total amount paid into and remaining in the General Revenue Fund as a result of those Acts minus the amount outstanding and obligated from the General Revenue Fund in state vouchers or warrants prior to the effective date of this amendatory Act of 1980 as refunds to taxpayers for overpayment of liability under those Acts.

All interest earned by monies accumulated in the Personal Property Tax Replacement Fund shall be deposited in such Fund. All amounts allocated pursuant to this Section are appropriated on a continuing basis.

Prior to December 31, 1980, as soon as may be after the end of each quarter beginning

with the quarter ending December 31, 1979, and on and after December 31, 1980, as soon as may be after January 1, March 1, April 1, May 1, July 1, August 1, October 1 and December 1 of each year, the Department of Revenue shall allocate to each taxing district as defined in Section 1-150 of the Property Tax Code, in accordance with the provisions of paragraph (2) of this Section the portion of the funds held in the Personal Property Tax Replacement Fund which is required to be distributed, as provided in paragraph (1), for each quarter. Provided, however, under no circumstances shall any taxing district during each of the first two years of distribution of the taxes imposed by this amendatory Act of 1979 be entitled to an annual allocation which is less than the funds such taxing district collected from the 1978 personal property tax. Provided further that under no circumstances shall any taxing district during the third year of distribution of the taxes imposed by this amendatory Act of 1979 receive less than 60% of the funds such taxing district collected from the 1978 personal property tax. In the event that the total of the allocations made as above provided for all taxing districts, during either of such 3 years, exceeds the amount available for distribution the allocation of each taxing district shall be proportionately reduced. Except as provided in Section 13 of this Act, the Department shall then certify, pursuant to appropriation, such allocations to the State Comptroller who shall pay over to the several taxing districts the respective amounts allocated to them.

Any township which receives an allocation based in whole or in part upon personal property taxes which it levied pursuant to Section 6-507 or 6-512 of the Illinois Highway Code and which was previously required to be paid over to a municipality shall immediately pay over to that municipality a proportionate share of the personal property replacement funds which such township receives.

Any municipality or township, other than a municipality with a population in excess of 500,000, which receives an allocation based in whole or in part on personal property taxes which it levied pursuant to Sections 3-1, 3-4 and 3-6 of the Illinois Local Library Act and which was previously required to be paid over to a public library shall immediately pay over to that library a proportionate share of the personal property tax replacement funds which such municipality or township receives; provided that if such a public library has converted to a library organized under The Illinois Public Library District Act, regardless of whether such conversion has occurred on, after or before January 1, 1988, such proportionate share shall be immediately paid over to the library district which maintains and operates the library. However, any library that has converted prior to January 1, 1988, and which hitherto has not received the personal property tax replacement funds, shall receive such funds commencing on January 1, 1988.

Any township which receives an allocation based in whole or in part on personal property taxes which it levied pursuant to Section 1c of the Public Graveyards Act and which taxes were previously required to be paid over to or used for such public cemetery or cemeteries shall immediately pay over to or use for such public cemetery or cemeteries a proportionate share of the personal property tax replacement funds which the township receives.

Any taxing district which receives an allocation based in whole or in part upon personal

property taxes which it levied for another governmental body or school district in Cook County in 1976 or for another governmental body or school district in the remainder of the State in 1977 shall immediately pay over to that governmental body or school district the amount of personal property replacement funds which such governmental body or school district would receive directly under the provisions of paragraph (2) of this Section, had it levied its own taxes.

(1) The portion of the Personal Property Tax Replacement Fund required to be distributed as of the time allocation is required to be made shall be the amount available in such Fund as of the time allocation is required to be made.

The amount available for distribution shall be the total amount in the fund at such time minus the necessary administrative expenses as limited by the appropriation and the amount determined by: (a) $2.8 million for fiscal year 1981; (b) for fiscal year 1982, .54% of the funds distributed from the fund during the preceding fiscal year; (c) for fiscal year 1983 through fiscal year 1988, .54% of the funds distributed from the fund during the preceding fiscal year less .02% of such fund for fiscal year 1983 and less .02% of such funds for each fiscal year thereafter, or (d) for fiscal year 1989 and beyond no more than 105% of the actual administrative expenses of the prior fiscal year. Such portion of the fund shall be determined after the transfer into the General Revenue Fund due to refunds, if any, paid from the General Revenue Fund during the preceding quarter. If at any time, for any reason, there is insufficient amount in the Personal Property Tax Replacement Fund for payment of costs of administration or for transfers due to refunds at the end of any particular month, the amount of such insufficiency shall be carried over for the purposes of transfers into the General Revenue Fund and for purposes of costs of administration to the following month or months. Net replacement revenue held, and defined above, shall be transferred by the Treasurer and Comptroller to the Personal Property Tax Replacement Fund within 10 days of such certification.

(2) Each quarterly allocation shall first be apportioned in the following manner: 51.65% for taxing districts in Cook County and 48.35% for taxing districts in the remainder of the State.

The Personal Property Replacement Ratio of each taxing district outside Cook County shall be the ratio which the Tax Base of that taxing district bears to the Downstate Tax Base. The Tax Base of each taxing district outside of Cook County is the personal property tax collections for that taxing district for the 1977 tax year. The Downstate Tax Base is the personal property tax collections for all taxing districts in the State outside of Cook County for the 1977 tax year. The Department of Revenue shall have authority to review for accuracy and completeness the personal property tax collections for each taxing district outside Cook County for the 1977 tax year.

The Personal Property Replacement Ratio of each Cook County taxing district shall be the ratio which the Tax Base of that taxing district bears to the Cook County Tax Base. The Tax Base of each Cook County taxing district is the personal property tax collections for that taxing district for the 1976 tax year. The Cook County Tax Base is the personal property tax collections for all taxing districts in Cook County for the 1976 tax year. The Department of Revenue shall

have authority to review for accuracy and completeness the personal property tax collections for each taxing district within Cook County for the 1976 tax year.

For all purposes of this Section 12, amounts paid to a taxing district for such tax years as may be applicable by a foreign corporation under the provisions of Section 7-202 of the Public Utilities Act, as amended, shall be deemed to be personal property taxes collected by such taxing district for such tax years as may be applicable. The Director shall determine from the Illinois Commerce Commission, for any tax year as may be applicable, the amounts so paid by any such foreign corporation to any and all taxing districts. The Illinois Commerce Commission shall furnish such information to the Director. For all purposes of this Section 12, the Director shall deem such amounts to be collected personal property taxes of each such taxing district for the applicable tax year or years.

Taxing districts located both in Cook County and in one or more other counties shall receive both a Cook County allocation and a Downstate allocation determined in the same way as all other taxing districts.

If any taxing district in existence on July 1, 1979 ceases to exist, or discontinues its operations, its Tax Base shall thereafter be deemed to be zero. If the powers, duties and obligations of the discontinued taxing district are assumed by another taxing district, the Tax Base of the discontinued taxing district shall be added to the Tax Base of the taxing district assuming such powers, duties and obligations.

If two or more taxing districts in existence on July 1, 1979, or a successor or successors thereto shall consolidate into one taxing district, the Tax Base of such consolidated taxing district shall be the sum of the Tax Bases of each of the taxing districts which have consolidated.

If a single taxing district in existence on July 1, 1979, or a successor or successors thereto shall be divided into two or more separate taxing districts, the tax base of the taxing district so divided shall be allocated to each of the resulting taxing districts in proportion to the then current equalized assessed value of each resulting taxing district.

If a portion of the territory of a taxing district is disconnected and annexed to another taxing district of the same type, the Tax Base of the taxing district from which disconnection was made shall be reduced in proportion to the then current equalized assessed value of the disconnected territory as compared with the then current equalized assessed value within the entire territory of the taxing district prior to disconnection, and the amount of such reduction shall be added to the Tax Base of the taxing district to which annexation is made.

If a community college district is created after July 1, 1979, beginning on the effective date of this amendatory Act of 1995, its Tax Base shall be 3.5% of the sum of the personal property tax collected for the 1977 tax year within the territorial jurisdiction of the district.

The amounts allocated and paid to taxing districts pursuant to the provisions of this

amendatory Act of 1979 shall be deemed to be substitute revenues for the revenues derived from taxes imposed on personal property pursuant to the provisions of the "Revenue Act of 1939" or "An Act for the assessment and taxation of private car line companies", approved July 22, 1943, as amended, or Section 414 of the Illinois Insurance Code, prior to the abolition of such taxes and shall be used for the same purposes as the revenues derived from ad valorem taxes on real estate.

Monies received by any taxing districts from the Personal Property Tax Replacement Fund shall be first applied toward payment of the proportionate amount of debt service which was previously levied and collected from extensions against personal property on bonds outstanding as of December 31, 1978 and next applied toward payment of the proportionate share of the pension or retirement obligations of the taxing district which were previously levied and collected from extensions against personal property. For each such outstanding bond issue, the County Clerk shall determine the percentage of the debt service which was collected from extensions against real estate in the taxing district for 1978 taxes payable in 1979, as related to the total amount of such levies and collections from extensions against both real and personal property. For 1979 and subsequent years' taxes, the County Clerk shall levy and extend taxes against the real estate of each taxing district which will yield the said percentage or percentages of the debt service on such outstanding bonds. The balance of the amount necessary to fully pay such debt service shall constitute a first and prior lien upon the monies received by each such taxing district through the Personal Property Tax Replacement Fund and shall be first applied or set aside for such purpose. In counties having fewer than 3,000,000 inhabitants, the amendments to this paragraph as made by this amendatory Act of 1980 shall be first applicable to 1980 taxes to be collected in 1981.

Section 915. The Public Utilities Act is amended by adding Section 13-511 and changing Section 13-704 as follows:

(220 ILCS 5/13-511 new)

Sec. 13-511. Telecommunications Municipal Infrastructure Maintenance Fee Act; rate adjustments. With respect to any telecommunications retailer that is regulated by the Illinois Commerce Commission, the Commission shall order such rate adjustments as shall be necessary to assure that the implementation of the Telecommunications Municipal Infrastructure Maintenance Fee Act, including the payment of the State infrastructure maintenance fee, optional infrastructure maintenance fee, and municipal infrastructure maintenance fee, if any, net of (1) the termination of any fee, license fee, rent, or lease payment subject to the Telecommunications Municipal Infrastructure Maintenance Fee Act, and (2) the repeal of any invested capital tax subject to the Telecommunications Municipal Infrastructure Maintenance Fee Act, shall have no significant impact on the net income of each such telecommunications retailer. Beginning with the effective date of the Telecommunications Municipal Infrastructure Maintenance Fee Act, each such telecommunications retailer shall maintain such records and accounts as will enable the Commission to make such findings and determinations as are necessary to such order.

(220 ILCS 5/13-704)

(This Section is scheduled to be repealed July 1, 1999.)

Sec. 13-704. Each page of a billing statement which sets forth charges assessed against a customer by a telecommunications carrier for telecommunications service shall reflect the telephone number or customer account number to which the charges are being billed. The billing statement shall also contain a separate bill identifying the amount charged as an infrastructure maintenance fee.

Section 920. The Telephone Company Act is amended by changing Section 4 as follows:

(220 ILCS 65/4)

Sec. 4. Right of condemnation. Every telecommunications carrier as defined in the Telecommunications Municipal Infrastructure Maintenance Fee Act ~~such company~~ may, when it shall be necessary for the construction, maintenance, alteration or extension of its telecommunications system ~~telephone system~~, or any part thereof, enter upon, take or damage private property in the manner provided for in, and the compensation therefor shall be ascertained and made in conformity to the provisions of the Telegraph Act ~~"An Act to revise the law in relation to telegraph companies", approved March 24, 1874,~~ and every telecommunications carrier ~~such company~~ is authorized to construct, maintain, alter and extend its poles, wires, ~~cables~~ and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water ~~or public ground~~ in this State, but so as not to incommode the public in the use thereof: Provided, that nothing in this act shall interfere with the control now vested in cities, incorporated towns and villages in relation to the regulation of the poles, wires, cables and other appliances, and provided, that before any such lines shall be constructed along any such highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water +>> it shall be the duty of the telecommunications carrier ~~telephone company~~ proposing to construct any such line, to give (in the case of cities, villages, and incorporated towns) to the corporate authorities of the municipality or their designees (hereinafter, municipal corporate authorities) or (in other cases) to the highway commissioners having jurisdiction and control over the road or part thereof along and over which such line is proposed to be constructed, notice in writing in the form of plans, specifications, and documentation of the purpose and intention of the ~~said~~ company to construct such line over and along the ~~said road or~~ highway, street, alley, public right-of- way dedicated or commonly used for utility purposes, or water, which ~~said~~ notice shall be served at least 10 ~~ten~~ days before the ~~said~~ line shall be placed or constructed over and along the ~~said~~ highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water (30 days in the case of any notice providing for excavation relating to new construction in a public highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water); and

upon the giving of the ~~said~~ notice it shall be the duty of the municipal corporate authorities or the ~~said~~ highway commissioners to specify the portion of such ~~road or~~ highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water upon which the ~~said~~ line may be placed, used, and constructed, and it shall thereupon be the duty of the telecommunications retailer to provide the municipal authorities or highway commissioners with any and all plans, specifications, and documentation available and ~~said company~~ to construct its ~~said~~ line in accordance with such specifications; but in the event that the municipal corporate authorities or the ~~said~~ highway commissioners ~~shall, for any reason,~~ fail to provide ~~make~~ such specification within 10 ~~ten~~ days after the service of such notice, (25 days in the case of excavation relating to new construction) then the telecommunications retailer ~~said company~~, without such specification having been made, may proceed to place and erect its ~~said~~ line along the ~~said~~ highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water by placing its posts, poles and abutments so as not to interfere with other proper uses of the ~~said road or~~ highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water. The telecommunications carrier ~~telephone company~~ proposing to construct any such line shall comply with the provisions of Section 9--113 of the Illinois Highway Code~~, as the same may from time to time be amended~~. Provided, that the telecommunications carrier ~~such telephone companies~~ shall not have the right to condemn any portion of the right-of-way ~~right of way~~ of any railroad company except as much thereof as is necessary to cross the same.

The Illinois Commerce Commission may adopt reasonable rules governing the negotiation procedures that are used by a telecommunications carrier ~~company described in Section 1 of this Act~~ during precondemnation negotiations for the purchase of land rights-of-way and ~~right-of-way~~ easements, including procedures for providing information to the public and affected landowners concerning the project and the right-of-way easements sought in connection therewith.

Such rules may be made applicable to interstate, competitive intrastate and noncompetitive intrastate facilities, without regard to whether such facilities or the ~~telephone company or~~ telecommunications carrier proposing to construct and operate them would otherwise be subject to the Illinois Commerce Commission's jurisdiction under The Public Utilities Act, as now or hereafter amended. However, as to facilities used to provide exclusively interstate services or competitive intrastate services or both, nothing in this Section confers any power upon the Commission (i) to require the disclosure of proprietary, competitively sensitive, or cost information or information not known to the ~~telephone company or~~ telecommunications carrier, (ii) to determine whether, or conduct hearings regarding whether, any proposed fiber optic or other facilities should or should not be constructed and operated, or (iii) to determine or specify, or conduct hearings concerning, the price or other terms or conditions of the purchase of the right-of-way easements sought. With respect to facilities used to provide any intrastate services classified in the condemnor's tariff as noncompetitive under Section 13-502 of The Public Utilities Act~~, as now or hereafter amended,~~ the rulemaking powers conferred upon the Commission under this Section are in addition to any rulemaking powers arising under The Public Utilities Act, as now or hereafter amended.

No ~~telephone company or~~ telecommunications carrier shall exercise the power to condemn private property until it has first substantially complied with such rules with respect to the property sought to be condemned. If such rules call for providing notice or information before or during negotiations, a failure to provide such notice or information shall not constitute a waiver of the rights granted in this Section, but the ~~telephone company or~~ telecommunications carrier shall be liable for all reasonable attorney's fees of that landowner resulting from such failure.

**EXHIBIT B**

**TELECOMMUNICATIONS INFRASTRUCTURE**

**MAINTENANCE FEE ORDINANCE**

**S U B S T I T U T E**

**O R D I N A N C E**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The Municipal Code of Chicago is hereby amended by adding a new chapter 3-75 as follows:

**3-75-010 Title.**

This chapter shall be known as and may be cited as the Telecommunications Infrastructure Maintenance Fee Ordinance and the fee imposed by this chapter shall be known as the "Infrastructure Maintenance Fee."

**3-75-020 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

A. "City" means the city of Chicago, Illinois.

B. "Department" means the department of revenue of the city.

C. "Director" means the director of revenue of the city.

D. "Gross charge" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications in the city, and for all services rendered in connection therewith, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charge" for private line service shall include charges imposed at each channel point within the city, charges for the channel mileage between each channel point within the city, and charges for that portion of the interstate inter-office channel provided within the city.

"Gross charge" shall not include:

(1) any amounts added to a purchaser's bill because of a charge made under: (a) the fee imposed by this chapter, (b) additional charges added to a purchaser's bill under Section 9-221 or Section 9-222 of the Illinois Public Utilities Act, (c) amounts collected under chapter 3-70 of this Code, (d) the tax imposed by the Telecommunications Excise Tax Act, (e) 911 surcharges, or (f) the tax imposed by Section 4251 of the Internal Revenue Code;

(2) charges for a sent collect telecommunication received outside of the city;

(3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. This subsection (D)(3) applies, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, accounting equipment or voice mail systems, and also

includes the usage of computers under a time-sharing agreement;

(4) charges for customer equipment, including equipment that is leased or rented by the customer from any source, but only if the charges are disaggregated and separately identified from other charges;

(5) charges to business enterprises certified under section 9-222.1 of the Illinois Public Utilities Act to the extent of such exemption and during the period of time specified by the city;

(6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, but only to the extent that the charges between the parent corporation and the wholly owned subsidiaries or between the wholly owned subsidiaries represent an expense allocation among the entities and not the generation of profit other than a regulatory required profit for the corporation rendering the telecommunications and related services;

(7) bad debts; provided, however, if any portion of a debt deemed to be bad is subsequently paid, the retailer shall report and pay the infrastructure maintenance fee on that portion of the debt during the reporting period in which the payment is made;

(8) charges paid by inserting coins in coin-operated telecommunications devices; or

(9) charges for telecommunications and all services and equipment provided to the city.

In addition, retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. Gross charges include charges for telecommunications and all services and equipment provided to any governmental entity other than the city.

E. "Bad debt" means any portion of a debt that is related to a sale of telecommunications at retail, for which gross charges are not otherwise deductible or excludable, that has become worthless or uncollectible as determined under applicable federal income tax standards;

F. (1) "Telecommunications," in addition to the usual and popular meaning, includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall include wireless telecommunications as hereinafter defined.

(2) The definition of "telecommunications" set forth in subsection (F)(1) shall not include (a) value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission; (b) the purchase of telecommunications or telecommunications services by a retailer for use as a component part of a service provided to the ultimate retail consumer who originates or terminates the end-to-end communications; or (c) the provision of cable services through a cable system as defined in the Cable Communications Policy Act of 1984 (47 U.S.C. Sections 521 and following), as now or hereafter amended, or through an open video system as defined in the rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following), as now or hereafter amended, or the provision of other video programming services equivalent to services provided through a cable system, or the provision of "direct-to-home satellite services" within the meaning of Section 602 of the Federal Telecommunications Act of 1996 (Public Law No. 104-104), as now or hereafter amended.

G. "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), as now or hereafter amended, including all commercial mobile radio services and paging services.

H. "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this chapter.

I. "Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, but only when the infrastructure maintenance fee imposed by this chapter previously has been paid to a retailer and the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for use or consumption and not for resale.

J. "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this location is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

K. ATelecommunications provider≅ means: (1) any telecommunications retailer; (2) any telecommunications reseller that is not a telecommunications retailer; and (3) any person that is not a telecommunications retailer or telecommunications reseller that installs, owns, operates or controls

equipment in the public way that is used or designed to be used to transmit telecommunications in any form.

L. APublic way≅ has the meaning ascribed to the term in Chapter 10-30 of this Code.

**3-75-030 Infrastructure maintenance fee imposed.**

A. Pursuant to the authority granted by section 20 of the Illinois Telecommunications Municipal Infrastructure Maintenance Fee Act, there is hereby imposed an infrastructure maintenance fee upon telecommunications retailers at the rate of 2% of all gross charges charged by telecommunications retailers to a service address in the city for telecommunications originating or received in the city.

B. The fee imposed by this chapter shall not be imposed in any circumstances in which the imposition of the fee would violate the Constitution or statutes of the United States.

**3-75-040 Collection of additional charge by retailers.**

A. (1) Any retailer making or effectuating a sale of telecommunications at retail shall pay the infrastructure maintenance fee to the department as provided by section 3-75-050 of this chapter. The fee shall constitute a debt owed by the retailer to the city.

(2) The retailer shall charge each customer an additional charge in an amount equal to the infrastructure maintenance fee attributed to the customer=s service address in the city. This additional charge to customers shall, when collected, be stated as a distinct item on the bill to each customer separate and apart from the retailer's gross charges to its customers for telecommunications.

B. Each retailer may retain 2% of the additional charges it collects under this chapter to reimburse itself for expenses incurred in connection with accounting for and remitting the fee to the department.

**3-75-050 Filing returns and payments by retailers.**

A. On or before the last day of each calendar month, every retailer required to pay the infrastructure maintenance fee imposed by this chapter shall file with the department a remittance return and shall pay the fee attributable to gross charges for the preceding calendar month. The return shall be filed on a form prescribed by the director, and shall contain such information as the director may reasonably require.

B. No later than March 31 of each year beginning in 1999, every telecommunications retailer shall provide to the department a report of an audit performed by an independent certified public accountant attesting to the amount of the infrastructure maintenance fees paid to the department for the preceding calendar year, and that such amount complies with the requirements of this chapter.

**3-75-060 Registration.**

A. Every telecommunications provider within the meaning of this chapter shall register with the department within 30 days after the effective date of this chapter or within 30 days after becoming a telecommunications provider, whichever is later, on a form to be provided by the department. The telecommunications provider shall have a continuing duty to file with the department a revised

registration form within 30 days after the date of occurrence of any changes in the information provided on the form, including the creation or termination of a contractual relationship described in subsection (C).

B. Every retailer that has registered in accordance with the Chicago Telecommunications Tax Ordinance, Section 3-70-060 of this Code, shall be regarded as registered in accordance with subsection (A) of this section.

C. Every telecommunications provider shall, on the registration form required by this Section or Section 3-70-060, indicate the name and address of every telecommunications reseller or other telecommunications provider with whom the registering telecommunications provider has a contractual relationship to provide telecommunications services or to make available telecommunications facilities in the public way. The director may by rule excuse telecommunications retailers from the requirements of this subsection (C) where the information required by this subsection is supplied on returns filed under Section 3-75-050.

**3-75-070 Resales.**

Whenever amounts are claimed to be excluded from gross charges as sales for resale under Section 3-75-020(D), the reseller shall furnish to the telecommunications provider the reseller=s resale number obtained under Chapter 3-70 of this Code. The telecommunications provider shall retain the number with its books and records.

**3-75-080 Maintaining books and records.**

Every retailer required to pay the fee imposed by this chapter, and every other

telecommunications provider claiming an exclusion from gross charges as sales for resale under Section 3-75-020(D), shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any liability or exemption. All such books and records shall, at all times during business hours of the day, be subject to and available for inspection by the department.

**3-75-090 Application of Uniform Revenue Procedures Ordinance.**

The provisions of the Uniform Revenue Procedures Ordinance, chapter 3-4 of this Code, shall apply to and supplement this chapter to the extent they are not clearly inconsistent herewith, and, notwithstanding any provision of that ordinance to the contrary, the infrastructure maintenance fee imposed by this chapter shall be deemed a revenue measure for purposes of the application of that ordinance.

**3-75-100 Application of other revenue provisions.**

The infrastructure maintenance fee imposed by this chapter is imposed in addition to all taxes, fees and other revenue measures imposed by the city, the state of Illinois or any other political subdivision of the state; provided, however, that no fee or other compensation in addition to the fee provided in this chapter shall be required for the use of the public way by a telecommunications carrier pursuant to Chapter 10-30.

**3-75-110 Rules and regulations.**

The director is authorized to adopt, promulgate and enforce rules and regulations pertaining

to the administration and enforcement of this chapter.

**3-75-120 Penalties; remedies.**

A. Any telecommunications retailer who fails to pay the infrastructure maintenance fee as provided by this chapter shall be subject to a fine of not less than $2,000 for each day that the failure to pay continues. Each day that the retailer's failure to pay continues shall constitute a separate and distinct violation and offense under this chapter. Any retailer who becomes subject to this fine may be enjoined from doing business in the city until the retailer has paid all sums due and owing under this chapter.

B. Any telecommunications provider who otherwise violates this chapter shall be subject to a fine of not less than $1,000 for each offense. Each day the violation continues shall constitute a separate offense.

**SECTION 2.** Chapter 3-70 of the Municipal Code of Chicago, the Chicago Telecommunications Tax Ordinance, is hereby amended by deleting the language in brackets and adding the language underscored as follows:

**3-70-020 Definitions.**

When any of the following words or terms are used in this chapter, whether or not capitalized, they shall have the meaning or construction ascribed to them in this section:

* * * * *

(E) "Gross charge" means the amount paid for the act or privilege of originating

telecommunications in the city, and for all services rendered in connection therewith, valued in money, whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. However, "gross charge" shall not include:

(1) Any amounts added to a purchaser's bill because of a charge made pursuant to: (a) the tax imposed by this chapter, (b) additional charges added to a purchaser's bill pursuant to Section 9-222 of the Illinois Public Utilities Act, (c) the tax imposed by the Illinois Telecommunications Excise Tax Act, [or] (d) the tax imposed by Section 4251 of the United States Internal Revenue Code, or (e) the infrastructure maintenance fee imposed by chapter 3-75 of this Code;

* * * * *

**SECTION 3.** Title 10 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 10-30 as follows:

**10-30-010 Definitions**.

(a) ACommissioner≅ means the Commissioner of the Department of Transportation of the City of Chicago.

(b) ADepartment≅ means the Department of Transportation of the City of Chicago.

(c) APublic way≅ or Apublic ways≅ means City highways, streets, alleys, public rights-of-way dedicated or commonly used for utility purposes, and water. Public way shall not include any

City property that is not specifically described in the previous sentence, and shall not include City buildings and other structures and improvements, regardless of whether they are situated in the public ways. However, the Commissioner may, when necessary for the purposes of this chapter, designate other City property, that is functionally similar to the public way, as the public way for some or all purposes of this of this chapter. The designation shall be made pursuant to rules and regulations promulgated under Section 10-30-050.

(d) ATelecommunications provider≅ has the meaning ascribed to the term in Section 3-75-020 of this code.

(e) ATelecommunications equipment≅ does not include pay telephones that are subject to Section 10-28-265 of this Code.

For purposes of this chapter, the definitions in this section shall control over any other definition of the same term contained in another chapter of this code.

**Section 10-30-020 Permit required.**

(a) No telecommunications provider shall install or maintain any telecommunications equipment on, over or under the public way without first having obtained a telecommunications provider permit issued by the Commissioner pursuant to this chapter.

(b) The Commissioner shall deny the issuance of a permit under this chapter, or shall revoke any such permit, only if:

(1) The Commissioner determines that the installation or maintenance of the telecommunications equipment would endanger public health or safety or otherwise inconvenience the public; or

(2) The Commissioner determines that the telecommunications provider has not paid any applicable infrastructure maintenance fee or license fee; has not provided any security required pursuant to this chapter or regulations issued thereunder; has not complied with specifications prescribed under this chapter; or has otherwise failed to comply with the provisions of this Code, or any rules or regulations adopted pursuant thereto.

**Section 10-30-030 Notice.**

(a) A telecommunications provider that intends to install any telecommunications equipment on, over or under the public way shall give the City notice of such installation by filing written notice with the Commissioner no less than 10 days prior to the date the installation is to begin or, if the installation requires excavation relating to new construction, no less than 30 days prior to the date the excavation is to begin. The notice shall be in the form of plans, specifications and documentation of the purpose and intention of the telecommunications provider with respect to the installation, and shall be in a form prescribed by the Commissioner which shall be designed to provide the Commissioner with all of the information necessary to determine whether the installation will be consistent with the safety and welfare of the public and all users of the public way. Within three business days after receiving notice under this Section, the Commissioner shall notify the Alderman of any ward in which the installation is to be made.

(b) Within 10 days after receiving notice under this Section (or within 25 days if the notice is for installation that requires excavation relating to new construction), the Commissioner shall specify the portion of the public way that the telecommunications provider shall be permitted to occupy without creating an undue risk to the safety or welfare of the public and all users of the public

way. Upon receiving the Commissioner's specification of the permitted location, the telecommunications provider shall provide the Commissioner with any additional plans, specifications and documentation available. Upon the telecommunications provider=s submission of additional plans, specifications and documentation available, the Commissioner shall, in a timely fashion, issue a permit allowing the telecommunications provider to install and maintain telecommunications equipment in accordance with the terms and conditions specified in the permit. However, if permission for installation on a particular portion of the public way must be denied for any of the reasons specified in subsection (b) of Section 10-30-020, that denial shall be issued in writing within the 10 or 25 day period, as the case may be, and shall specify the reasons for the denial. If the City fails to specify a permitted location or issue a written denial within the time required by this subsection (b), a permit shall be deemed to have issued for the telecommunications provider to install and maintain, solely at the telecommunications provider=s risk, telecommunications equipment on, over or under the public way, provided that such installation and maintenance: (i) is not in violation of this Code or any rules and regulations adopted pursuant thereto; and (ii) does not interfere with other proper uses of the public way.

(c) Nothing in this chapter shall excuse any person or entity from obligations imposed under any applicable law or ordinance, or regulations issued by the Department of Transportation, concerning generally applicable standards for construction on, over, under, or within, use of or repair of the public ways, including standards relating to free standing towers and other structures on the public ways, nor shall any person or entity be excused from any liability imposed by any such law or ordinance for failure to comply with such standards. However, a person or entity that installs or maintains telecommunications equipment pursuant to this chapter shall not be required to obtain a

public way work license or public way work permit under Chapter 10-20.

**10-30-040 Permit fees; security; compensation for use of other property.**

(a) Notwithstanding any provision of this Code to the contrary, a telecommunications provider that is properly paying the applicable infrastructure maintenance fee pursuant to Chapter 3-75 shall be exempt from any permit fee or other compensation otherwise payable to the City under this Code for use of the public way, including fees otherwise payable under Chapter 10-20, for any period of time for which the infrastructure maintenance fee is paid.

(b) The applicable fee for a permit issued under this chapter to a telecommunications provider that is not excused from paying permit fees under subsection (a) shall be an amount determined by the Commissioner to provide for recovery of the City's actual costs or reasonable estimated costs of maintaining and regulating the public way in a manner consistent with the public welfare. Such costs shall include, but not be limited to, the City's cost of inspection, regulation, maintenance, administration and repair.

(c) No permit shall be issued under this chapter unless the applicant provides such surety or other instrument of security, insurance and indemnification as the Risk Manager, in the Office of the City Comptroller and the Commissioner, reasonably may require for the purposes of this chapter.

(d) Nothing in this Code shall prohibit the City from requiring compensation for, and franchise or other agreements governing, the use of any City property that is not the public way as defined in this chapter.

**10-30-050 Rules and regulations.**

The Commissioner is authorized to establish rules and regulations on a competitively neutral and nondiscriminatory basis as shall be necessary to further the purposes of this chapter and to manage the public ways as defined in this chapter and to ensure that access to, use or occupancy of space on, under or over the public way be conducted and maintained in a safe and efficient manner consistent with the provisions of this Code.

**10-30-060 Violation--penalty--revocation--removal.**

(a) Any person who violates this chapter shall be subject to a fine of not less than $500 and not more than $2,000 for each offense. Each day that such violation continues shall be considered a separate offense. The permit of any such person shall be subject to revocation, and any such person shall be enjoined to comply with this chapter.

(b) Any telecommunications equipment installed or maintained in violation of this chapter and applicable regulations may be removed by the City, or seized and disposed of by the City in case of abandonment, at the owner's or operator's expense.

**SECTION 4**. Section 10-29-020 of the Municipal Code of Chicago is hereby amended by deleting the language in brackets and adding the language underscored as follows:

**10-29-020 Permit required for installation or maintenance.**

No person or entity shall install or maintain any wire, pipe, cable or conduit on, under or over the surface of any public way or public property [with] without first having obtained a permit issued by the department of transportation. Applications and permits shall be in such form and shall require such plans and specifications as prescribed by the commissioner. This chapter shall not apply to the installation or maintenance of telecommunications equipment on, over or under the public way by telecommunications providers as provided in Chapter 10-30.

**SECTION 5.** Notwithstanding the provision of any agreement or ordinance to the contrary, the City waives its right to receive, during the time the infrastructure maintenance fee is imposed under Chapter 3-75 of the Municipal Code of Chicago, all fees, charges and other compensation from telecommunications retailers for use of the public way pursuant to any franchise agreement in existence as of January 1, 1998. The Director of Revenue shall give notice of the waiver in the manner and time prescribed under Section 25(f) of the Illinois Infrastructure Maintenance Fee Act to the appropriate telecommunications retailers. This waiver does not apply to agreements granting telecommunications retailers the right to solicit or engage in direct commercial activities on or over the public way, such as the sale of telecommunications services or the placement of pay telephones. Except as otherwise provided in this ordinance, agreements between the City and telecommunications providers for use of the public way pursuant to any franchise agreement or the like in existence as of January 1, 1998 shall remain valid according to their stated terms; provided that to the extent that regulations issued pursuant to this chapter supersede or conflict with provisions of existing franchise agreements and are necessary to maintain competitive neutrality, such regulations

shall control over such provisions.

**SECTION 6.** This ordinance shall be in full force and effect from and after its passage and approval; except that Sections 1 and 2 of this ordinance shall take effect the later of January 1, 1998 or the date occurring 90 days after the notice of waivers referred to in Section 5 shall have been given, and those sections shall apply to customers= bills issued on or after the first day of the month first beginning after the effective date of those sections; and except that Sections 3 and 4 of this ordinance take effect January 1, 1998.

**EXHIBIT C.**

**CHICAGO DEPARTMENT OF TRANSPORTATION - BUREAU OF INSPECTIONS**

**REGULATIONS FOR**

**OPENINGS, CONSTRUCTION AND REPAIR IN THE PUBLIC WAY**

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CHICAGO DEPARTMENT OF TRANSPORTATION - BUREAU OF INSPECTIONS

REGULATIONS FOR

OPENINGS, CONSTRUCTION AND REPAIR IN THE PUBLIC WAY

# Chapter 1

# Definitions

## 1A. Definition of Terms

When used in these regulations the following terms or abbreviations shall have the following meaning:

### 1A.1 Abbreviations

| | |
|---|---|
| AASHTO | American Association of State Highway and Transportation Officials |
| APWA | American Public Works Association |
| CTA | Chicago Transit Authority |
| CDOT | Chicago Department of Transportation |
| CDOT/CCD | Chicago Department of Transportation Construction Compliance Division |
| CDOT/OUC | Chicago Department of Transportation Office of Underground Coordination - Utilities of Chicago |
| CUAN | Chicago Utility Alert Network |
| CDOT/BOBT | Chicago Department of Transportation Bureau of Bridges and Transit |
| CDOT/BOI | Chicago Department of Transportation Bureau of Inspections |

| | |
|---|---|
| CDOT/BOT | Chicago Department of Transportation<br>Bureau of Traffic |
| DOS | Department of Sewers |
| DOW | Department of Water |
| DSS | Department of Streets and Sanitation |
| DSS/FOR | Department of Streets and Sanitation<br>Bureau of Forestry |
| DSS/BOE | Department of Streets and Sanitation<br>Bureau of Electricity |
| IDOT | Illinois Department of Transportation |
| IDOT/SSRBC | Illinois Department of Transportation/<br>Standard Specifications for Road and<br>Bridge Construction (latest edition) |

## 1A.2 Definitions

Certain definitions not specifically provided herein relating to Telecommunications Providers are set forth in Chapters 3-75 and 10-30 of the Code. To the extent definitions herein shall conflict with such sections of the Code, the Code definitions shall control.

CERTIFICATE OF INSURANCE - Certificate of Insurance naming the City of Chicago as additional insured.

CHICAGO FREIGHT TUNNELS - The freight tunnels running below certain streets of the City.

CITY - The City of Chicago, Illinois.

CITY PROPERTY - Includes all real property owned by the City, excluding public streets and utility easements and all property held in a proprietary capacity by the City, including the Tunnels. The Freight Tunnels are being treated as the Public Way for certain purposes as set forth in Chapter 9 of these Regulations.

CODE - The Municipal Code of Chicago, as amended.

COMMISSIONER - The Commissioner of the Department

CONTRACTOR - Collectively, any individual, contractor, subcontractor, representative, agent or consultant employed by a Permittee or its affiliate to perform the work under a Permit.

DEPARTMENT - The City=s Department of Transportation.

INSPECTOR - The authorized representative of CDOT/CCD assigned to make inspections of any or all portions of the work directly or indirectly affecting the Public Way.

IMPROVED - Any portion of the Public Way which has been paved in accordance with City standards and specifications, including sidewalks, curbs, gutters, and drainage structures.

INFRASTRUCTURE MAINTENANCE FEE - The fees to be paid to the City by certain Telecommunications Providers pursuant to Chapter 3-75 of the Code.

LETTER OF CREDIT- An irrevocable, unconditional standby Letter of Credit naming the City as beneficiary (See Figures 17A and 17B).

LICENSE - The public way work license specified in Chapter 10-20 of the Code (See Figure 18).

MATERIALS - Any substances specified for use in construction or repairs.

PARKWAY - That portion of the Public Way located between the curb line and the sidewalk (normally reserved for tree and grass planting) (See Figure 1).

PAVEMENT STRUCTURE - The combination of sub-base, base course, and surface course placed on a prepared subgrade to support the traffic load and distribute it to the roadbed (See Figure 1).

PERMIT - Written authority to proceed with any activity which may directly or indirectly affect the Public Way, granted by the Department (Room 804-City Hall). The term Permit shall also include a permit deemed to be issued pursuant to Section 2B.1(b) of these regulations.

PERMITTEE - Person receiving a Permit from the Department of Transportation, including but not limited to Utilities. All Telecommunications Providers are considered Permittees, regardless of which Person is listed on or acquires a Permit related to construction or installation of equipment of such Telecommunications Provider.

PERSON - Includes all individuals, sole proprietorships, partnerships, limited partnerships, firms, limited liability companies and corporations.

PUBLIC WAY - City highways, streets, alleys, public right-of-way dedicated or commonly used for utility purposes and water. A typical City street dedicated as a right-of-way is shown in Figure 1.

RISK MANAGER - The Risk Manager, Department of Finance of the City, or such other office or employee of the City to whom responsibilities and duties regarding insurance standards, limits and requirements shall be assigned in the future.

ROADBED - The graded portion of a roadway prepared as a foundation for the pavement structure.

ROADWAY - That portion of the Public Way devoted to vehicular traffic, normally as measured from curb to curb. (See Figure 1).

SIDEWALK - That portion of the Public Way devoted to pedestrian traffic (normally a minimum of a 6-foot wide concrete strip located one foot from the property line) (See Figure 1).

SPECIFICATIONS - The body of directions, provisions, and requirements contained herein, or in any supplement adopted by the City, pertaining to the method or manner of performing work and the quantity or quality of materials utilized.

STRUCTURES - Objects which are an integral part of the Public Way including, but not limited to, vaults in sidewalks, sewer and catchbasin grates and covers, manhole and/or vault covers, trees, etc.

SUBGRADE - The top surface of the roadbed on which the pavement structure is built.

TELECOMMUNICATIONS/TELECOMMUNICATIONS PROVIDER - Definitions pertaining to ATelecommunications" and "Telecommunications Provider≅ are set forth in Chapter 3-75 of the Code. The provisions in these regulations applicable to Telecommunications Providers and relating to Letter of Credit, insurance and general construction standards and submittals are also applicable to Utilities which are not Telecommunications Providers; except that where City franchises or other agreements with such Utilities which are not Telecommunications Providers specifically conflict with or preempt these regulations, such franchise provisions shall control and provided, that in the case of such Utilities the provisions of Section 2B.1 of these regulations shall not apply.

TROLLEY TUNNELS - Collectively, the three tunnels formerly used by trolley cars crossing the Chicago River at LaSalle Street, Washington Street and Van Buren Street.

TUNNELS - Collectively, the Chicago Freight Tunnels and the Trolley Tunnels located under certain City streets.

UNIMPROVED - Any portion of the Public Way which has not been paved in accordance with City standards and specifications, including but not limited to gravel roadway, W.P.A. streets, and asphalt or gravel sidewalks, driveways and alleys.

UTILITY - Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity, telecommunication, light, heat, gas, oil, crude products, steam, water, sewer and other similar commodities, including all Telecommunications Provider and providers of cable television. The term "Utility" includes but is not limited to the following, who are members of CDOT/OUC at the present time:

- Peoples Gas Light & Coke
- Commonwealth Edison
- Ameritech
- ATS/Western Union
- City of Chicago Department of Streets and Sanitation, Bureau of Electricity
- City of Chicago Department of Streets and Sanitation, Bureau of Forestry
- TCI - Chicago Cable T.V.
- World Com (MFS, Inc.)
- Prime Cable of Chicago
- Teleport Communications
- Metropolitan Water Reclamation District
- City of Chicago Department of Water
- City of Chicago Department of Sewers
- City of Chicago Department of Transportation, Quality Assurance Division
- Chicago Park District
- Chicago Transit Authority
- 21st Century Cable T. V.

VIADUCT/BRIDGE - Any load-carrying structure, including supports erected over an obstruction (such as waterways, railroads, or other roadway), having a passageway for carrying vehicular and/or pedestrian traffic.

# Chapter 2

## Specific Requirements

### Requirements Pursuant to Chapter 10-20 and 10-30

The following shall describe the type of approval required prior to making any opening in, or constructing or repairing any pavement in, the Public Way pursuant to Chapter 10-20 and 10-30 of the Code.

In general, the requirements set forth in Section 2A of these regulations do not apply to Telecommunications Providers subject to the requirements of Section 2B of these regulations. However, no telecommunication facilities may be installed in the Public Way by or on behalf of a Telecommunications Provider unless a Telecommunications Provider permit has been issued under Section 2B of these Regulations or deemed issued as provided in Code Section 10-30-030(b). In addition, each Contractor which installs facilities in the Public Way on behalf of a Telecommunications Provider (but is not itself the Telecommunications Provider whose facilities are being installed) must obtain its own public way work license pursuant to this Section 2A. See Section 3B.1 of these regulations.

### 2A License Requirements Pursuant to Chapter 10-20

The provisions set forth in Section 2A of these regulations are applicable solely to persons making openings in or constructing or repairing any pavement in the Public Way who are not subject to Section 2B of these regulations.

### 2A.1 Public Way Work Licenses

It shall be the responsibility of any Person (who is not a Telecommunications Provider subject to Chapter 10-30) to obtain a public way work license from CDOT/CCD prior to making an opening in, or constructing or repairing any pavement in, the Public Way. Applications for such a license and for any renewals must be submitted in the office of CDOT in Room 804, City Hall. See Figure 18 for a sample license application and renewal form.

A public way work license may be applied for at any time during the calendar year, and the license will be valid, unless otherwise invalidated, suspended or revoked, until midnight of December 31st of the calendar year in which the license is issued.

A license fee will be charged for issuing licenses according to Section 10-20-100 of Chapter 10-20 of the Code.

X A copy of Chapter 10-20 of the Code can be obtained from CDOT/CCD, City Hall, Room 804.

## 2A.2 Insurance Requirements

Each applicant for a public way work license and for any renewals shall be required to furnish to the City proof of valid certificate/s of insurance/s as discussed below:

1. Furnish a certificate of Commercial General Liability insurance naming the City of Chicago an Aadditional insured". Minimum Limits of Liability, $1,000,000.00 per occurrence. This insurance must be maintained unchanged from the terms initially approved by CDOT and must be maintained uninterrupted for the duration of the license period. If a person holding a public way work license allows this insurance to be cancelled or to expire or otherwise lapse for more than 30 days during a calendar year, the license will be rendered void and the person must reapply for a new license and pay a new license fee in order to be considered for a valid license.

2. Where applicant will use a motor vehicle (any type), in the conduct of business or will require a permit for the parking of said vehicle or vehicles on the Public Way, applicant will also be required to furnish a certificate of automobile insurance showing the City of Chicago as an additional insured. Minimum Limits of liability on motor vehicles, $1,000,000.00 per occurrence.

3. All policies must be written by companies authorized to do business in Illinois.

4. An original and one copy of each certificate in question should be sent for review and approval to:

   CITY OF CHICAGO
   Department of Transportation
   121 North LaSalle Street, Room 804
   Chicago, Illinois 60602

## 2A.3 Letter of Credit Requirements

Each applicant for a public way work license and for any renewals shall be required to furnish to the City proof of a valid Letter of Credit as discussed below:

1. Furnish an original irrevocable, unconditional, standby Letter of Credit naming the City of Chicago as beneficiary. The Letter of Credit shall be a clean Letter of Credit, requiring only sight drafts for proper presentment, shall permit partial and multiple draws, and shall be in the form shown in Figure 17A.

2. The expiry date of the Letter of Credit shall be at least three years from the last day of the license period for which application is made. For example, if a public way work license (or renewal of same) is applied for in January of 2000, the Letter of Credit submitted with the application shall not expire before midnight on December 31 of 2003. If a public way work license (or renewal of same) is applied for in June of 2001, the Letter of Credit submitted with the application shall not expire before midnight on December 31 of 2004. An applicant for renewal of a public way work license may arrange for an extension of the expiration date of an existing Letter of Credit, as an alternative to obtaining a new Letter of Credit.

3. The dollar amount of the Letter of Credit shall determine the amount of work that may be performed pursuant to the license during a given license period. The following four Letter of Credit levels shall apply:

   (i) $5,000.00 Letter of Credit -- By submitting a $5,000.00 Letter of Credit to CDOT, the holder of the public way work license may disturb an unlimited amount of unpaved Public Way, and may disturb up to 75 square yards of street and/or alley pavement or up to 1200 square feet of Sidewalk pavement, or any combination of the three pavements, calculated at the following rate, up to a maximum of $5,000.00:

   Street and/or alley pavement at $65.00 per square yard.
   Sidewalk pavement at $4.00 per square foot.

   (ii) $25,000.00 Letter of Credit -- By submitting a $25,000.00 Letter of Credit to CDOT, the holder of the public way work license may disturb an unlimited amount of unpaved Public Way, and may disturb up to 375 square yards of street and/or alley pavement or up to 6000 square feet of Sidewalk pavement, or any combination of the three pavements, calculated at the following rate, up to a maximum of $25,000.00:

   Street and/or alley pavement at $65.00 per square yard.
   Sidewalk pavement at $4.00 per square foot.

   (iii) $50,000.00 Letter of Credit -- By submitting a $50,000.00 Letter of Credit to CDOT, the holder of the public way work license may disturb an unlimited amount of unpaved Public Way, and may disturb up to 750 square yards of street and/or alley pavement or up to 12,500 square feet of Sidewalk pavement, or any combination of the three pavements, calculated at the following rate up to a maximum of $50,000.00.

   Street and/or alley pavement at $65.00 per square yard.
   Sidewalk pavement at $4.00 per square foot.

(iv) $100,000.00 Letter of Credit -- By submitting a $100,000.00 Letter of Credit to CDOT, the holder of the public way work license may disturb an unlimited amount of unpaved Public Way, street and/or alley pavement or Sidewalk pavement.

The Aper square yard≅ and Aper square foot≅ dollar amounts are used in this paragraph 3 to define the scope of work which may be performed pursuant to a given level of Letter of Credit, and are not charges or assessments for performing the work.

The amount of pavement and/or other Public Way surface that may be disturbed by a project is stated in, and measured by, a public way work permit (Chapter 3). Accordingly, if a permitted project involves more than one licensee or a Telecommunications Provider, only the licensee or the Telecommunications Provider named on the permit is required to meet the level of Letter of Credit required for that permitted project. All other licensees working on that project must, however, be in compliance with the Letter of Credit requirement, at a dollar level appropriate for their own permitted work.

At any time during a license period, a licensee may raise or lower the amount of work that the licensee may perform pursuant to a public way work license by submitting a new Letter of Credit in a different amount or by submitting an amendment to the amount specified in the licensee=s existing Letter of Credit. Any such submission shall be made to, and shall be subject to the prior approval of, CDOT. Any work performed during a license period prior to the time of any such change in amount shall be carried over and applied to the new amount authorized.

The restrictions as to the amount of pavement and/or other Public Way surface that may be disturbed under a given level of Letter of Credit shall not apply to work done pursuant to a contract with the City. However, a valid public way work license and public way work permit shall be required for such work, and all licensees participating in such work must otherwise be in compliance with the Letter of Credit requirement, at a dollar level appropriate for their scope of work.

4. All Letters of Credit must be issued by a financial institution that is an insured depository institution (as defined in 12 U. S. C. ∋ 1813). The financial institution may be subject to the prior approval of the City Comptroller. The financial institution issuing the Letter of Credit shall preferably be located within, or have a branch located within, the Chicago metropolitan area and shall preferably carry an investment grade rating from one of the major rating agencies.

5. Except for an authorized change in the amount of the Letter of Credit discussed in paragraph 3 above or an authorized extension of the expiration date, the above-

described Letter of Credit must be maintained unchanged from the terms initially approved by the Commissioner and must be maintained uninterrupted for the duration of the period specified in paragraph 2 above. If the Letter of Credit is cancelled or expires or otherwise lapses for more than 30 days during a calendar year, the license will be rendered void and the licensee shall be subject to the penalties for violation of Chapter 10-30, Chapter 10-20 and other applicable provisions of the Code. Upon being notified that a Letter of Credit will be cancelled or will not be extended and upon determining that such cancellation or failure to extend is improper, the City may draw upon the Letter of Credit pending resolution of the issue. In the event that the City draws from the Letter of Credit, the licensee shall take any action required to restore the Letter of Credit to its full amount within three days of notification by the City of its withdrawal against the Letter of Credit.

6. If circumstances occur that cause the financial institution issuing the Letter of Credit to fail financially or no longer meet the approval of the City Comptroller, the licensee shall promptly arrange for a replacement Letter of Credit to be issued by an acceptable financial institution.

7. In order to avoid processing delays and possible additional costs from the applicant=s financial institution, the submission to CDOT of a draft Letter of Credit, in the form of Figure 17A, for review and approval is encouraged. An original and one copy of each Letter of Credit in question should be sent for review and approval to:

   CITY OF CHICAGO
   Department of Transportation
   121 North LaSalle Street, Room 804
   Chicago, Illinois 60602

8. Upon consultation with the Corporation Counsel of the City and upon being satisfied that adequate security is provided, the Commissioner, for good cause shown, may accept an existing Letter of Credit naming the City of Chicago as beneficiary or other form of security as a substitute for the Letter of Credit required by this Section 2A.3. For example, in appropriate circumstances, a person who performs work in the Public Way exclusively as a Contractor of the holder of a Telecommunications Provider permit (see Section 2B. below), may satisfy the Letter of Credit requirement of Chapter 10-20 of the Code with the Letter of Credit required of the Telecommunications Provider.

**2A.4 Notices or Citations -- License Suspension**

As provided in Chapter 10-20 of the Code, a public way work license may be suspended for repeated notices and/or citations. The number of notices and/or citations that may trigger the imposition of a suspension depends on the level of work authorized in the license, as measured by the applicable Letter of Credit amount, as follows:

For a public way work license maintained in conjunction with a $5,000.00 Letter of Credit, a suspension may be imposed for three (3) notices and/or citations during a license period.

For a public way work license maintained in conjunction with a $25,000.00 Letter of Credit, a suspension may be imposed for ten (10) notices and/or citations during a license period.

For a public way work license maintained in conjunction with a $50,000.00 Letter of Credit, a suspension may be imposed for fifteen (15) notices and/or citations during a license period.

For a public way work license maintained in conjunction with a $100,000.00 letter of credit, a suspension may be imposed if the number of notices and/or citations during a license period exceeds ten (10) percent of the number of public way work permits issued to the licensee during the license period or for twenty (20) notices and/or citations during a license period, whichever number is greater.

**2B. Requirements Pursuant to Chapter 10-30 (Telecommunications Provider)**

Subject to Section 10-30-030 of the Code and Section 2B.1 of these regulations, no Telecommunications Provider (as defined in Section 3-75 of the Code) shall make an opening in, or construct or repair any part of, or install any telecommunications equipment in, on or over any part of the Public Way without getting a telecommunications provider permit under this Section 2B. Pursuant to Section 10-30-020(b) of the Code the Commissioner shall deny the issuance of a Permit under this Section 2B, or shall revoke any such Permit if:

(1) The Commissioner determines that the installation or maintenance of the telecommunications equipment would endanger public health or safety or otherwise inconvenience the public; or

(2) The Commissioner determines that the Telecommunications Provider has not paid any applicable infrastructure maintenance fee pursuant to Chapter 3-75 of the Code or Permit fee pursuant to Section 10-30-40(b) of the Code; and has not provided any security required pursuant to these regulations; has not complied with specifications prescribed under

these regulations; or has otherwise failed to comply with the provisions of the Code, or any applicable rules or regulations adopted pursuant thereto, including these regulations.

X A copy of Chapter 10-30 and Chapter 3-75 of the Code and related Code provisions can be obtained from CDOT/CCD, City Hall, Room 804.

## 2B.1 Permit Process

(a) A Telecommunications Provider that intends to install any telecommunications equipment on, over or under the Public Way shall give the City notice of such installation by filing written notice with the Commissioner no less than 10 days prior to the date the installation is to begin or, if the installation requires excavation relating to new construction, no less than 30 days prior to the date the excavation is to begin. The notice shall include plans, specifications and documentation of the purpose and intention of the Telecommunications Provider with respect to the installation, and shall be in a form, as amended from time to time, prescribed by the Commissioner consistent with the requirements of Chapter 3-75 of the Code. Where installation shall require excavation in the Public Way, such notice form shall require proof of submittal of construction documents to CDOT/OUC as set forth in Section 3C.5 at least 10 days prior to submittal of notice under this Section 2B.1. Notice forms must be obtained from and submitted to the office of CDOT in Room 804, City Hall.

(b) Within 10 days after receiving a completed notice form under this Section (or within 25 days if the notice form is for installation that requires excavation relating to new construction), the Commissioner shall specify the portion of the Public Way that the Telecommunications Provider shall be permitted to occupy without creating an undue risk to the safety or welfare of the public and all users of the Public Way. Upon receiving the Commissioner=s specification of the permitted location, the Telecommunications Provider shall provide the Commissioner with any additional plans, specifications and documentation required which are available. Upon the Telecommunications Provider=s submission of the additional plans, specifications and documentation, the Commissioner shall, in a timely fashion issue a permit allowing the Telecommunications Provider to install and maintain telecommunications equipment in accordance with the terms and conditions specified in the permit. However, if permission for installation on a particular portion of the Public Way must be denied for any of the reasons specified in subsection (b) of Section 10-30-020 of the Code and Section 2B of these regulations described above that denial shall be issued in writing within the 10 or 25 day period, as the case may be, and shall specify the reasons for the denial. If the Commissioner fails to specify a permitted location or issue a written denial within the time required by this paragraph (b), a permit shall be deemed to have been issued for the Telecommunications Provider to install and maintain, solely at the Telecommunications Provider=s risk, telecommunications equipment on, over or under the Public Way, provided that such installation and maintenance: (i) is not in violation of the

Code or any rules and regulations adopted pursuant thereto, including these regulations; and (ii) does not interfere with other proper uses of the Public Way.

(c) Nothing in these regulations shall excuse any person or entity from obligations imposed under any applicable law or ordinance, or regulations issued by the Department concerning generally applicable standards for construction on, over, under, or within, use of or repair of the Public Ways, including standards relating to free standing towers and other structures on the Public Ways, nor shall any person or entity be excused from any liability imposed by any such law or ordinance, or regulations for failure to comply with standards.

(d) Any notification for a Permit for telecommunication system installation and/or maintenance shall include appropriate evidence, if requested, of approval and permission from the Illinois Commerce Commission and provide evidence of registration of the Telecommunications Provider with the City=s Department of Revenue under Chapter 3-75 of the Code and, if requested, with the State of Illinois as a telecommunications retailer, if applicable, under 35 ILCS 635/10 et seq. or an explanation as to why such registration is not legally required by Illinois law.

There will be no permit fee charged for Permits issued to Telecommunications Providers which are subject to the AInfrastructure Maintenance Fee≅ pursuant to Chapter 3-75 of the Code or persons whose sole work in the Public Way consists of working for such a Telecommunications Provider for the installation of telecommunications facilities. No fee permitting shall continue during such time as the Telecommunications Provider: (i) is subject to and is paying the Infrastructure Maintenance Fee established by Section 3-75-030 of the Code and (ii) has complied with the other requirements of Chapter 3-75 of the Code (including registration).

(e) Permittees holding an existing telecommunications provider permit covering facilities in the Public Way and seeking to expand, modify or relocate such facilities in the Public Way shall obtain a new telecommunications provider permit for such activities. However, compliance with the requirements of notice under Chapter 10-30 of the Code and Section 2B.1 of these regulations may be achieved through submittal of legible and complete copies of insurance, letter of credit and other security documents in effect under existing Permits, together with the Permit numbers of such applicable existing permits, provided that such instruments and documents provide the same coverages and protections to the City for all activities and facilities related to the new permit as is provided under the existing permit and that no further coverages or protections are deemed necessary by the Commissioner.

In case construction documents are submitted by a Telecommunications Provider or its Contractor, the Permittee=s documentation shall be submitted to CDOT/OUC at least 10 days before submittal of notice pursuant to Section 2B of these regulations. If the construction documents so submitted are found to be incomplete or deficient or do not conform to these regulations, CDOT/OUC will not process the request. CDOT/OUC will

inform the Permittee in writing, stating the reasons for not processing the construction documents, within 48 hours of submittal. When the required information is submitted and found to be complete and sufficient for review by CDOT/OUC, the Permittee=s documentation will be transmitted to OUC members for review.

## 2B.2 Insurance Requirements

Each Telecommunications Provider using the Public Way shall be required to provide and maintain the insurance specified below throughout the duration of the permit and as described below:

1. Worker=s Compensation and Employers Liability Insurance:

   Workers Compensation and Employers Liability Insurance as prescribed by applicable law, covering all employees who are to provide a service to Permittee and Employers Liability coverage with limits of not less than $500,000.00 each accident or illness.

2. Commercial General Liability Insurance (Primary and Umbrella).

   Commercial General Liability Insurance or equivalent with limits of not less than $5,000,000.00 per occurrence, for bodily injury, personal injury, and property damage liability. Any tunnel penetration shall require limits of not less than $10,000,000.00 per occurrence for bodily injury, personal injury and property damage liability. Coverage shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, independent Contractors, separation of insured, defense and contractual liability (with no limitation endorsement). The City is to be named as additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

   Subcontractors performing work shall be required to maintain limits of not less than $1,000,000.00 with the same limits as set forth above.

3. Railroad Protective Liability Insurance

   When any work is to be done adjacent to or on railroad or transit property, with respect to the operations performed, Railroad Protective Liability Insurance in the name of the railroad or transit entity shall be provided. The policy shall have limits of not less than $2,000,000.00 per occurrence, combined single limit, and $6,000,000.00 in the aggregate for losses arising out of injuries to or death of all

persons, and for damage to or destruction of property, including the loss of use thereof.

4. Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned, and hired) are used in connection with work to be performed, Automobile Liability Insurance shall be maintained with limits of not less than $1,000,000.00 per occurrence, for bodily injury and property damage. The City shall be named as an additional insured on a primary, non-contributory basis.

5. Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with a permitted project, Professional Liability Insurance covering acts, errors or omissions shall be maintained with limits of not less than $1,000,000.00. Coverage shall include contractual liability. When policies are renewed or replaced, each policy=s retroactive date must coincide with, or precede, start of work as authorized by the Permit. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6. All Risk Property

The Permittee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies) in the care, custody or control of such Permittee.

7. Self-Insurance

To the extent permitted by law and subject to prior approval by the Risk Manager, a Permittee may self insure for the insurance requirements specified above. In case of any such approved self-insurance, the Permittee shall bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program shall comply with at least the insurance requirements set forth above.

8. Additional Requirements

Each Permittee will furnish the City of Chicago, Department of Transportation, Room 804, 121 North LaSalle Street, Chicago, Illinois 60602, an original Certificate of Insurance evidencing the required coverage to be in force on the date of the applicable Permit, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of a Permit. Each Permittee receiving a Permit under Section 2B of these regulations

shall submit evidence of insurance on the City of Chicago Insurance Certificate form or equivalent prior to Permit issuance. The failure of the City to obtain certificates or other insurance evidence from a Permittee shall not be deemed to be a waiver by the City. Each Permittee shall be deemed to have advised all of its insurers of the Permit provision regarding insurance. Non-conforming insurance shall not relieve a Permittee of the obligation to provide insurance as specified in these regulations. Nonfulfillment of the insurance conditions may constitute a violation of these regulations, and the City retains the right to terminate any issued permits until proper evidence of insurance is provided.

The insurance shall provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by the Permittee.

As a condition of Permit issuance, each Permittee is deemed to expressly understand and agree that its insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents or representatives.

As a condition of permit issuance, each Permittee is deemed to expressly understand and agree that any coverages and limits furnished by the Permittee shall in no way limit the Permittee=s liabilities and responsibilities specified under these regulations or by any permit issued or by law.

As a condition of permit issuance, each Permittee is deemed to expressly understand and agree that any insurance or self-insurance programs maintained by the City of Chicago shall apply in excess of and not contribute to insurance provided by a Permittee under the Permit.

The required insurance shall not be limited by any limitations expressed in the indemnification language contained in these regulations or any limitation placed on the indemnity therein given as a matter of law.

Each Permittee shall require all subcontractors to provide the insurance required herein or a Permittee may provide the coverages for subcontractors. All subcontractors of a Permittee shall be subject to the same insurance requirements as the Permittee unless otherwise specified herein.

<u>Any variation of the above-indicated insurance requirements can only be approved by the Commissioner, after consultation with the Risk Manager.</u>

9. All policies must be written by companies authorized to do business in Illinois.

## 2B.3 Letter of Credit Requirements

Each Telecommunications Provider submitting notice to the Commissioner pursuant to Section 10-30-030 of the Code and Section 2B of these regulations in conjunction with a telecommunications provider permit shall be required to furnish (or to have furnished in conjunction with prior notices) to the City an original irrevocable unconditional and valid Letter of Credit as described below:

1. The Letter of Credit shall name the City of Chicago as beneficiary. The Letter of Credit shall be a clean Letter of Credit, requiring only sight drafts for proper presentment, shall permit partial and multiple draws, and shall be in the form shown in Figure 17B.

2. The Telecommunications Provider shall maintain the Letter of Credit for the duration of the Permit, and shall further maintain the Letter of Credit for three years following the termination of the last Permit issued in connection with its facilities. For example, if a telecommunications provider permit expires in June of 2010, the Letter of Credit may not expire before midnight on June 30, 2013.

3. The dollar amount of the Letter of Credit shall be $500,000.00. However, upon providing proof to the City as specified below, the Telecommunications Provider may provide a Letter of Credit at the following reduced level:

   If the Permittee is an "Independent Small Telecommunications Provider" whose telecommunications system will constitute a single build which is not part of a larger telecommunications system located in the Public Way and such build will not require disturbing of more than 375 square yards of street pavement, alley pavement, Sidewalk pavement and/or unpaved Public Way, the Permittee will be allowed to build its system for a Letter of Credit of $25,000.00, provided that all other requirements of the Code and these regulations are met including, but not limited to, the insurance requirements set forth in Section 2B.2. Only the Commissioner, after consultation with the Risk Manager, will decide who is eligible for "Independent Small Telecommunications Provider" status.

4. All letters of credit must be issued by a financial institution that is an insured depository institution (as defined in 12 U. S. C. ə 1813). The financial institution may be subject to the prior approval of the City Comptroller. The financial institution issuing the Letter of Credit preferably shall be located within, or have a branch located within, the Chicago metropolitan area and preferably shall carry an investment grade rating from one of the major rating agencies.

5. Except for an authorized extension of the expiration date, the above-described Letter of Credit must be maintained unchanged from the terms initially approved by the Commissioner and must be maintained uninterrupted for the duration of the period specified in paragraph 2 above. If the Telecommunications Provider allows the Letter of Credit to be canceled or to expire or otherwise lapse the Permit will be rendered void and the Telecommunications Provider shall be subject to the penalties for violation of Chapter 10-30 and other applicable provisions of the Code. Upon being notified that a Letter of Credit will be cancelled or will not be extended and upon determining that such cancellation or failure to extend is improper, the City may draw upon the Letter of Credit pending resolution of the issue. In the event that the City draws from the Letter of Credit, the Telecommunications Provider shall take any action required to restore the Letter of Credit to its full amount within three days of notification by the City of its withdrawal against the Letter of Credit.

6. If circumstances occur that cause the financial institution issuing the Letter of Credit to fail financially or no longer meet the approval of the City Comptroller, the Permittee shall promptly arrange for a replacement Letter of Credit to be issued by an acceptable financial institution.

7. In order to avoid processing delays and possible additional costs from the applicant=s financial institution, the submission to CDOT of a draft Letter of Credit, in the form of Figure 17B, for review and approval is encouraged. An original and one copy of each Letter of Credit in question should be sent for review and approval to:

   CITY OF CHICAGO
   Department of Transportation
   121 North LaSalle Street, Room 804
   Chicago, Illinois 60602

8. Upon consultation with the Corporation Counsel of the City and upon being satisfied that adequate security is provided, the Commissioner, for good cause shown, may accept an existing Letter of Credit naming the City of Chicago as beneficiary or other form of security as a substitute for the Letter of Credit required by this Section 2B.3.

9. The Letter of Credit required by these regulations shall be used to ensure the faithful performance by the Telecommunications Provider and its Contractors of all their obligations under any Permit issued under Chapter 10-30 of the Code as well as the performance of any Contractor performing work related to such Permits and to remedy any defaults thereunder and to ensure compliance with all orders, licenses, and permits on direction of the City having jurisdiction over the Telecommunications Provider's or its Contractor's acts or defaults under the Permit and to pay any penalties, liens, claims, fees and taxes due the City which arise by reason of a Telecommunications Provider=s or its Contractor=s activities pursuant to the Permit.

Furthermore, said Letter of Credit may be used as provided in this section to repay the City for any damages, expenses or costs incurred by the City by reason of a Telecommunications Provider's or its Contractor's acts or omissions connected with any matter covered in a Permit.

10. In the absence of a dangerous condition that poses an imminent threat (see paragraph 11 below), if the actions or omissions of a Telecommunications Provider or its Contractor results in a condition for draw, CDOT shall provide the Telecommunications Provider with notice, by certified mail, of the condition(s) for draw and an opportunity to respond, and shall provide the Telecommunications Provider with a reasonable time period to correct the condition(s) before drawing on the Telecommunications Provider=s Letter of Credit.

11. If the actions or omissions of a Telecommunications Provider or its Contractors result in a dangerous condition that poses an imminent threat to the safety of pedestrians, motorists, or others on or near the Public Way and makes notice impracticable, CDOT may correct or arrange for the correction of the condition and shall provide the Telecommunications Provider with notice, by certified mail, of the costs incurred and an opportunity to respond, and shall provide the Telecommunications Provider with 48 hours from the mailing of notice to remit funds to cover the City=s costs before drawing on the Telecommunications Provider=s Letter of Credit.

12. The Commissioner may in his or her discretion draw upon the Letter of Credit, either simultaneously or sequentially, of any one or more licensees or Permittees either holding, or performing work pursuant to, a Permit issued pursuant to this Section 2B of these regulations. Any such draw shall be pursuant to the procedures set forth in this section 2B.

**2B.4 Fees for Telecommunications Providers which do not pay the Infrastructure Maintenance Fee under Chapter 3-75 of the Code.**

(a) Pursuant to Chapter 10-30-040(b) of the Code the Commissioner is authorized to determine what the permit fee shall be for Telecommunications Providers not subject to the infrastructure maintenance fee required by Chapter 3-75 of the Code and who have not otherwise entered into an agreement with the City regarding fees or other compensation. Such fees shall provide for the recovery of the City=s actual or reasonably estimated costs of maintaining and regulating the Public Way in a manner consistent with the public welfare,

and shall include, but not be limited to, the City=s costs of inspection, regulation, maintenance, administration and repair.

(b) The Commissioner will calculate the costs described in paragraph (a) above on a case by case basis, and from time to time, set forth the fees operative under paragraph (a). The fees under paragraph (a) are subject to change at any time on a prospective basis. The current fee structure can be obtained from CDOT/CCD at Room 804, City Hall. The Commissioner and a Telecommunications Provider subject to fees under this Section 2B.4 may mutually agree on the provision of in-kind compensation to the City consisting of cables, conduits or other telecommunications facilities as an offset to be applied against such fees, provided that such offset shall be calculated in a reasonable and nondiscriminatory manner.

(c) All Permit fees required under this Section 2B.4 shall be paid to the City=s Department of Revenue prior to the issuance of a Telecommunications Provider Permit. Annual Fees, as applicable, shall be payable no later than 30 days following the anniversary of the date of issuance of the Telecommunications Provider Permit for which such Annual Fees pertain. If extraordinary costs are incurred by the City as a result of work performed by or on behalf of a Telecommunications Provider, the Telecommunications Provider will reimburse the City. Such extraordinary costs shall be reimbursed within 30 days of a written statement from the City as to such amount of extraordinary costs (together with reasonable documentation thereof) from the Commissioner. Failure to timely pay the fees covered in this Section 2B.4 may lead to revocation by the Commissioner of all permits issued to a Telecommunications Provider. In case of such revocation, Section 3B.9 of these regulations shall apply.

# Chapter 3

## General Requirements

### 3A. Requirements Pursuant to Chapter 10-20 and Chapter 10-30

The following shall describe the type of approvals and permits required prior to making any opening in, including but not limited to excavation, tunnelling, boring and drilling, or constructing or repairing any pavement in, the Public Way pursuant to chapters 10-20 and 10-30 of the Code, subject to the provisions of Section 10-30-030 of the Code.

### 3B. Work Permits

It shall be the responsibility of any person (to include individuals, sole proprietorships, partnerships, limited partnerships, firms, limited liability companies and corporations) to obtain a Public Way Permit from CDOT/CCD pursuant to Chapters 10-20 and 10-30, as applicable. Applications/Notice forms for such permits may be obtained from and must be submitted in the office of CDOT/CCD in Room 804, City Hall. No work in the Public Way shall be started until an approved permit has been obtained. Where the work on the Public Way is being performed by or for the benefit of a Utility (except for governmental agencies, including the City of Chicago) which uses the Public Way to provide services to the public, the Permit must be issued in the name of such Utility.

### 3B.1 Permit Fees

A. Permittees requesting Permits under Chapter 10-20 (all applicants except Telecommunications Providers) for making an opening in or constructing or repairing any pavement in the Public Way will be subject to permit fees as set forth in Section 10-20-150 of Chapter 10-20 of the Code.

B. Permittees requesting Permits under Chapter 10-30 (Telecommunications Providers and/or their Contractors for the installation of a telecommunication system) will not be charged permit fees (including permit fees otherwise payable under Chapter 10-20); provided that the Telecommunications Provider is subject to the infrastructure maintenance fee pursuant to Section 3-75-030 of the Code and is not in violation of applicable requirements of Chapter 3-75 and Chapter 10-30 of the Code.

C. Telecommunications Providers who are not subject to the infrastructure maintenance fee pursuant to Section 3-75-030 of the Code are subject to fees as set forth in Section 2B.4.

* Copies of Chapters 3-75, 10-20 and 10-30 of the Code can be obtained from CDOT/CCD, City Hall, Room 804.

## 3B.2 Construction and Installation Documents Submittal Requirement

No person shall access the Public Way to construct, install , maintain or modify any facilities without the issuance of a Permit and the payment of any applicable fees under Chapters 3-75, 10-20 and 10-30 of the Code. All Permittees shall submit to the Commissioner documents which shall include, but are not limited to: project scope and purpose; drawing/plans and specifications identifying exact proposed locations, sizes, and depths; standards; and procedures depending upon the complexity or extent of the work. Said documents shall be consistent with requirements set forth in these regulations and with the requirements set forth in the Notice forms issued by the Commissioner. The Commissioner may ask for additional documentation whenever the Commissioner deems it necessary for management of the Public Way and the safety of the public and other users of the Public Way. Any application or notice for a Permit involving new construction or installation shall also be submitted to the Office of Underground Construction (OUC). All modifications shall be made, to the extent deemed necessary by the Commissioner, to any construction documents.

### 3.B.2.1"As-Built" Drawings

Within sixty (60) days after completion of the construction, installation or modification of the permitted facilities, the Permittee shall submit to CDOT "As-Built" drawings duly stamped. The Commissioner shall endeavor to keep such AAs Built≅ drawings Aconfidential≅ when so designated by the Permittee subject in all cases to applicable Illinois laws, City ordinances and judicial orders relating to freedom of information or disclosure unless the Commissioner determines that disclosure of such Aconfidential≅ drawings was necessary for the public's health, welfare or safety.

## 3B.3 Removal and Relocation

The City may modify, vacate or transfer what is now Public Way for a public purpose. As a condition of permit issuance, each Permittee is deemed to expressly acknowledge and agree that the City has the predominant right to use the Public Ways in the placement, maintenance and repair of sewers, water mains, trees and other Utility facilities or to relocate or remove such Permittee=s facilities either temporarily or permanently on 30 days notice for any public purpose, including, but not limited to, the use of the Public Way for public transportation purposes. The Permit issued may be amended or revoked in whole or in part by CDOT, whenever CDOT considers it necessary or advisable for a public purpose. Permittee shall make no claim for costs or damages against the City by reason of any removal or relocation and shall pay all such cost and expenses. CDOT can extend such 30 days notice period on a discretionary basis. CDOT may remove or relocate any of Permittee facilities at Permittee=s expense upon failure of Permittee to relocate or remove such facilities in a 30 day time period and all actual expenses incurred or damages paid by the City on account of such action shall be paid by Permittee upon demand. The City shall reasonably cooperate with Permittee in finding an alternate location for any facilities removed and in avoiding disruption to Permittee=s services. In an emergency, as determined by CDOT, the City may order Permittee to remove or relocate its facilities within forty-eight (48) hours. Permittee shall have an option, upon notice to CDOT, of abandoning the portion of its facilities to be removed or relocated.

### 3B.4 No Burden on Public Ways

No Permittee may construct or install its facilities in such a fashion or maintain its facilities as to unduly burden the present or future use of the Public Way under a Permit, nor build for excess capacity than the present or reasonably anticipated future need. In the event that the Commissioner shall determine that any portion of the Permittee=s facilities, either planned or presently constructed, unduly burdens any portion of the Public Way, now or in the future, the Permittee shall be required either to modify its facilities, or to take such actions as the Commissioner shall determine necessary for the sake of public convenience to eliminate the problem within the time frame provided by the Commissioner and the Code. Failure to comply in a timely fashion shall be grounds for revocation of the Permit and other penalties provided in the Code and of these regulations.

### 3B.5 Emergency or Disaster

In case of emergency or disaster, any Permittee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

### 3B.6 Suspension or Vacation of Permit

Should a Permittee or its Contractors violate any terms of a Permit, applicable provisions of the Codes or these regulations, the Commissioner may suspend or revoke the permit or take any other action the Commissioner may deem necessary, including the stopping of work or operations, until the violation is corrected to the satisfaction of the Commissioner. Failure to correct any such violation as required by the Commissioner may lead to revocation of all Permits under Section 3B.9.

### 3B.7 Physical Inspections

CDOT reserves the right to make, at any time after the date of issuance of the Permit and throughout the duration of the permit, physical on-site inspections regularly. The Permittee and/or its Contractor will accommodate CDOT=s need for access to the site and construction documents. The Permittee shall satisfy CDOT requirements and correct all construction deficiencies and submit latest applicable drawings as requested by CDOT.

### 3B.8 Trespassing Facilities

Any portion of the Permittee=s installation in the Public Way but not within areas which are specified in a valid Permit is known as a "Trespassing Facility". Upon discovery of a Trespassing Facility by CDOT, the Commissioner may order the immediate removal of such Trespassing Facilities from the Public Way, seek to obtain damages or pursue any other remedy permitted under Illinois Law.

### 3B.9 Revocation or Termination

Upon revocation or termination of any Permit, the Permittee, without cost to CDOT, shall promptly remove or abandon in place, at the option of CDOT, facilities installed in the Public Way and restore the Public Way to the satisfaction of the Commissioner. In the event of the failure or refusal of the Permittee and/or its designated representative to remove facilities or restore the Public Way as requested by the Commissioner, the Commissioner may have the facilities removed or deem them abandoned and property of the City. The Permittee will be held liable to reimburse CDOT for all costs of any removal.

### 3B.10 Restoration

Permittee shall, at its own expense in a manner approved by CDOT rebuild, restore or repair any portion of the Public Way disturbed by Permittee. In the event Permittee fails to perform the restoration to the satisfaction of the Commissioner, CDOT shall have the right to do so at the expense of the Permittee.

### 3B.11 Indemnities

Each Permittee shall be deemed solely responsible for the support, safety and protection of its facilities and the portions of the Public Way being used by the Permittee and for the safety and protection of all persons and all property coming into contact with such Permittee=s facilities or operations. In acceptance of any Permit, a Permittee shall be deemed to agree, to the maximum extent permitted under law, and at its sole cost and expense, to indemnify, defend, keep and save harmless the City, its officials, boards, commissioners, agents and employees (Collectively the AIndemnified Parties≅) against any and all suits, causes of action, proceedings and judgements costs and expenses (collectively referred as AClaims≅) arising out of, caused by or directly resulting from the Permittee=s work in or facilities installed in the Public Way or operations in the Public Way; provided that the Indemnified Parties may not be indemnified to the extent mutually agreed upon in writing between the City and Permittee or a court of final adjudication determines that a Claim or portion thereof has been caused by willful and wanton conduct of the City. The City shall have the right, at its option and at the expense of the Permittee, to participate in the defense of any suit where the City is a named defendant without relieving the Permittee of any of its obligations under this section. The term "Claim" specifically shall be deemed to include, but not be limited to, any liability for the payment of Worker=s Compensation under Illinois law which the City is required to make and the Permittee shall reimburse the City for any such payment made by the City; provided that such Permittee be provided reasonable notice of any such claim for Worker=s Compensation against the City and the opportunity to participate at its own expense in the defense against such claim. The Permittee, in accepting the terms of the Permit, shall be deemed as a condition of its acceptance to understand and agree that the insurance required shall in no way limit the responsibility of the Permittee to indemnify, keep and save harmless and defend the Indemnified Parties pursuant to this Section. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses of the Indemnified Parties, such as reasonable attorney fees, and shall also include the reasonable value of any services rendered by the Corporation Counsel or his or her assistants or any consultants, employees or agents or the City. The indemnities required by this Section shall survive the expiration or revocation of any Permit hereunder issued. In the case of Telecommunications Providers and other entities locating facilities in the Public Way, the Permittee shall be deemed to mean the Telecommunications Provider and/or any other owner of the facilities, as well as any Contractor and all such parties shall be deemed indemnifying parties under this Section 3B.11.

### 3B.12 Compliance with Applicable Laws

In addition to satisfying these regulations, the Permittee during installation, operation and maintenance of its any facilities in, on or over the Public Way, shall comply with all latest applicable laws and regulations of the United States of America and its agencies (including, but not limited to, the regulations, requirements and standards of the Federal Occupational Safety and Health Administration), the State of Illinois, and all applicable ordinances, regulations and executive orders of the City.

## 3C. Other Permit and Notification Requirements

Any person performing work in the Public Way shall obtain other required permits and provide notification(s) where required by the circumstance and conditions. These permits and/or notifications may include, but are not limited to the following:

### 3C.1 Chicago Utility Alert Network (CUAN)

It shall be the responsibility of the Permittee and any City agency to notify the CUAN (744-7000) a minimum of 48 hours prior to any penetration/excavation in the Public Way (except in case of emergency in which case such notice shall be given as soon as possible upon determination of the emergency), but in no case later than 24 hours after such determination. This requirement shall not apply to excavations which are not deeper than 18 inches for the purpose of pavement repairs only.

If the Commissioner shall determine that it is in the public interest and so directs in writing, a Permittee which operates underground utilities shall apply for, and if accepted, enter into membership, in the City-sponsored Utility Alert Network for underground facilities (ACUAN≅). Any other owner or operator of underground utility facilities may also apply for membership in CUAN.

### 3C.2 Bureau of Bridges and Transit Permit/s

Prior to any opening in the deck of a viaduct/bridge or opening which extends deeper than 3 feet below grade and/or within 40 feet of a viaduct/bridge support, a Bridge Permit must be obtained from CDOT/BOBT. Designs for all cuts and/or pavement removals on or near a viaduct/bridge must be submitted to CDOT/BOBT for review and approval prior to the start of the work.

### 3C.3 Chicago Transit Authority Approval/s

Prior to commencing any work within 50 feet of Chicago Transit Authority rapid transit tracks, satisfaction of CTA safety, insurance and inspection requirements must be demonstrated to the C TA Engineering Department. Permission to commence work must be obtained from the CTA Engineering Department a minimum of 48 hours in advance.

### 3C.4 Harbor Permit/s

All work in and within 40 feet of the City of Chicago Waterways will require a Harbor Permit from CDOT/BOI. CDOT/BOI is located at 30 North LaSalle Street, Suite 1101.

### 3C.5 Office of Underground Coordination (OUC)

All new construction and installation work in the Public Way involving excavation shall comply with guidelines and procedures issued by CDOT/OUC, pursuant to Section 2-120-300 of the Code. The construction documents shall be submitted to CDOT/OUC together with notice in the form required by the Commissioner. The Construction documents may include but are not limited to: project scope and purpose; drawings/plans and specifications identifying exact proposed locations, sizes and depths and proposed facilities relation with any and all existing facilities which may exist in the Public Way; construction standards; and proposed procedures depending upon the complexity or extent of the opening. The submitted documents will be reviewed by the OUC members. CDOT/OUC will need multiple sets of the construction documents (each set to be folded individually), such number to be requested by OUC. If there is conflict with the facilities of any OUC member because of proximity to or potential risk to existing facilities, the conflict will need to be resolved to the satisfaction of the OUC. Upon completion of the OUC review and approval process the OUC will issue approval notification to CDOT/CCD recommending the issuance of the permits. CDOT/OUC is located at 30 North LaSalle Street, Rm. 1101.

### 3C.6 Bureau of Forestry Permit/s

Any work in the public way involving the planting or removal of trees requires permission from DSS/FOR, prior to the start of work, pursuant to Sections 10-32-060 through 10-32-100 of the Code.

# Chapter 4

## Excavation Pavement Removal

### 4A. General

The following specifications apply to all pavement openings or trenches made in conjunction with underground plant repairs and/or installation of new runs. Complete replacement of a relatively large or deep underground plant requires special procedures not covered in this manual and when requested shall be submitted to CDOT/OUC and CDOT/CCD for pavement restoration requirements.

### 4B. Description

1. During construction, the permittee shall provide personnel at all openings who shall be responsible for the safe operation of all the equipment and protection of all workmen. The personnel in charge of the operations shall have had all the necessary training and shall also be knowledgeable as to the latest rules, guidelines and regulations of the local, state and federal agencies.

2. Breaking of concrete base material must be accomplished with a hand tool, pneumatic hammer, or hoe ram. Saws and rock cutters are to be utilized for pavement removal only and not as a sub-grade excavation tool, except that all pavement edges shall be saw-cut or milled prior to restoration of the pavement to achieve a clean, straight repair joint. For all pavements with Concrete Surface or Concrete Base, clean full depth saw cuts are required. .

3. Use of a drop hammer or other pavement breaking device is permitted only with special permission of CDOT/CCD.

4. Excavation within the roadway may be accomplished with hand tools, back-hoe or any other mechanical device designed for such purposes. However, when utilizing any method of excavation, extreme care must be exercised so as not to disturb or damage the many utilities beneath street pavements.

5. As indicated above in "Section 4A-General", when the proposed installation will be a relatively large or underground deep excavation (deeper than 12 feet) which may include excavation; tunneling; pipe jacking; directional drilling, the applicant will be required to submit detailed Construction Documents (drawings, with locations, alignment, profiles, sizes and depths; specifications, procedures, and standards) to CDOT/OUC and CDOT/Quality Assurance Division (QAD) for review and approval by CDOT and OUC members. Permits will not be issued until all conflicts with other utility members involved/affected have been resolved to the satisfaction of all concerned parties.

### 4C. Protection During Excavation of Arterial Streets

1. All arterial street openings during off-work periods shall be plated or decked unless specifically authorized by CDOT/CCD.

2. All plating and decking installed by a permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load. The size of the plate shall be large enough to span the opening with sufficient overlap. It shall be firmly bedded and secured to prevent rocking or movement. The name of the Permittee shall be on both sides of all plating and decking. CDOT/CCD may require that the Permittee submit the design calculations stamped by a Licensed Structural Engineer in the State of Illinois for review and approval of the structural integrity of the plating and/or decking.

**4D. Barricades**

Every excavation during work hours not plated to carry vehicular traffic shall be protected by barricades, fences or railings. During twilight or night hours where such protection is required, an amber light shall be kept lit from 2 hour before sundown to 2 hour after sunrise.

It shall be the duty of every person engaged in openings, construction or repair in the Public Way, by virtue of any permission which may be granted by the City where such work is left exposed and should be dangerous to the public, to install fences or railing and/or barricades in a manner to prevent danger to the public travelling such Public Way and continue to maintain such railings, fences and/or barricades until the work shall be completed or danger removed. The provisions of this section shall apply to every person who is performing any work or placing any obstruction in any of the Public Way.

All railings, fences and/or barricades placed on Public Way for the protection of the public shall be placed and maintained to the satisfaction and approval of the Commissioner

**4E. Protection of trees, shrubs, etc.**

All excavation in the public way requires special care be taken around trees to prevent injury. All excavation in parkway or sidewalk areas adjacent to trees or shrubs shall be accomplished with hand tools only, unless special permission is obtained from the Commissioner and from the Commissioner of DSS. Auguring or directional boring should be used where approved to install utilities in close proximity of trees. Open trenching should follow the guidelines indicated in figure 7B.

All work performed around or adjacent to trees is subject to the requirements of Chapter 10-32 and other applicable sections of the Code. Every effort should be taken to protect and maintain existing trees in a healthy and safe condition. Utmost care should be taken so as not to damage any root system of trees or shrubbery. If during construction a problem arises involving trees, DSS/FOR should be contacted immediately.

## 4F. Cleanliness

The Permittee shall be responsible for keeping the excavation area as clean as possible. All excavation spoil material shall be removed from the work site as soon as possible. No soil or fill material shall be permitted to restrict pavement drainage or gutter flow or to enter any sewer system. The tracking of mud, dirt and other loose material on the Public Way from construction sites located on or off the Public Way is prohibited. If deemed necessary by CDOT/CCD the Permittee may be required to provide for and show proof of regular cleaning of the Public Way adjacent to the construction site. Failure to keep the Public Way clean will result in revocations of the permits.

## 4G. Trench Opening Length Requirement

The length of the trench to be opened in any roadway for the purpose of laying pipes shall be limited to 300 ft. in advance of the pipe being placed therein. In cases of power and communication conduit/s installation, where the trench opening will be limited to 4 ft. in depth and 3 ft. in width, the length of the trench can be more than 300 ft. when approved by CDOT/CCD. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from CDOT/CCD.

# Chapter 5

## Trench Backfilling

### 5A. Materials

1. Fine aggregate shall be natural sand, stone sand, and recycled concrete free from organic, frozen or foreign materials, and shall be considered acceptable backfilling materials. Such materials shall have the following minimum gradation:

| Sieve Size | Passing % by weights |
|---|---|
| #4 | 84-100 |
| #100 | 0-40 |
| #200 | 0-12 |

NOTE: If 100% passes 2 inch sieve, the #4 sieve may be 50-100% passing.

2. Fly Ash Fill/Flowable Fill shall be a mixture of fly ash, cement (optional) and fine aggregates. The mixture shall have a minimum compressive strength of 40 pounds per square inch (psi) after 60 minutes, 50 psi after seven (7) days and a maximum compressive strength not to exceed 80 psi.

   Flowable Fill has been previously used at certain approved locations. Flowable Fill use is subject to review and approval by CDOT/OUC and by all its members. Flowable Fill use is reviewed and approved on a location by location basis.

3. All materials containing brick bats, excavated pavement materials, and/or debris shall be considered unacceptable for use as backfill. Any material containing shale or other soft durability particles shall also be unacceptable for backfill use.

### 5B. Backfill Procedures

1. CDOT requires that all power and/or communication lines shall be installed in a trench deep enough to provide a minimum cover of 30 inches over the facility. All other facilities (water line, sewer line, gas line, petroleum line, etc.) shall be installed in a trench deep enough to provide a minimum cover of 36 inches over the facility. The bottom of the trench shall be firm prior to placement of the bedding material and/or proposed facility. Any variation from the required cover over the facility requires prior written approval of CDOT/CCD.

2. Any pavement excavation shall be completely backfilled with material acceptable for this purpose, except that flowable fill shall not encase any iron pipe and be used only at those locations approved by CDOT/CCD. Fine aggregate backfill material shall be deposited in horizontal layers not to exceed 12 inches in depth prior to compaction. Maximum care shall be taken to fill all voids. Each layer shall be compacted to 95% of maximum density as determined by AASHTO T-99 prior to

placement of the succeeding layer. When placing fill around pipes, layers shall be deposited equally on both sides so as to progressively and uniformly bury the pipe.

3. Compaction shall be attained by the use of vibrating equipment. (Compaction by water jetting may be considered where the excavation is in well draining granular materials and above the existing ground water level. Approval is required of water jetting compaction procedures prior to starting compaction from CDOT/BOI.) Hand tamping is acceptable only in the immediate area of the underground facility.

**5C. Failure Due to Improper Compaction**

Any settlement which may develop in the backfilled areas and thus the surface within three (3) years of any work fully completed and accepted, shall be the responsibility of the Permittee and of any licensee/s working for or with the Permittee to remove and restore. The Permittee and/or other licensee/s, at his expense, shall remove the pavement and backfill material to the top of the installed facility and place new backfill material, properly compacted, and restore new pavement, sidewalk, curbs, and driveways to the proper grades as approved by CDOT/CCD.

# Chapter 6

## Pavement Placement

### 6A. Sidewalk and/or Driveways

1. When any portion of a sidewalk slab requires removal for access to an underground plant, the entire slab shall be removed and replaced. When a portion of a full width sidewalk requires removal, it will be necessary to remove concrete sidewalk to the nearest joints. Dummy joints shall be saw-cut.

2. When any portion of a driveway requires removal for access to any underground plant, the entire driveway shall be removed and replaced to the nearest existing construction joint.

3. See Figure 3 for sidewalk and Figure 4 for driveway construction standards.

4. Replacement of vaulted sidewalks will require special application with detailed description of structural members and/or special surface treatment or aggregate composition.

5. Replacement of special treatment and/or heated sidewalks will be to City standards unless agreement with the property owner provides for the additional cost to replace in kind.

6. When the work is performed under existing driveways, alleys, or adjacent to street intersections, where the existing sidewalk is removed or is damaged due to the proposed construction, the affected sidewalk shall be designed and reconstructed as per latest standard for Federal, State and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons (American With Disabilities Act Compliance).

### 6B. Alleys

1. Alley pavements shall be saw-cut through asphalt surface (if present) and to a minimum depth of 3 inches of concrete. Concrete shall be placed for the full 8 inch depth of the pavement and finished flush to match the surrounding concrete pavement or up to the bottom of the existing asphalt surface (if present). Alley pavement construction shall conform to Figure 5. If the alley has been overlaid by asphalt surface, then for restoration, the asphalt surface shall be saw-cut the full width of the alley and 1 foot beyond the limits of the proposed trench along the longitudinal direction. The alley shall be resurfaced between the saw-cut boundaries across the entire width of the alley (ROW to ROW).

2. Replacement of special treatment/brick pavers, etc. shall be with the same materials and shall match the existing conditions unless otherwise approved by CDOT/CCD in writing.

**6C. Street Pavements**

1. In arterial streets, the existing pavement section may consist of several inches of asphalt underlain by a base of paving blocks, bricks, concrete, etc. and/or any combination thereof. Regardless of the existing pavement composition, base restoration shall consist of 10 inches of P.C.C. base in accordance with the SSRBC. If the existing asphalt thickness is equal to or greater than 4 inches to the top of the base, restoration shall be to a level which is 4 inches below existing street surface grade. If the existing asphalt thickness is between 12 and 4 inches to the top of the base, restoration shall be to the level of the asphalt bottom of the existing asphalt or a minimum of 2 inches, whichever is lower. High early strength concrete shall be used for base restoration in arterial street traffic lanes and the concrete shall be plated for five (5) days after placement or until the time the concrete has achieved a compressive strength of 3,000 psi as evidenced from concrete cylinder break tests. Regular concrete may be utilized in areas of arterial streets designated for full time parking, and must be plated for seven days or the time the concrete has achieved a strength of 3,000 psi as evidenced from concrete cylinder break tests when special mix concrete is used.

2. For all streets which have been reconstructed with a concrete surface/base in the last seven (7) years, it is the City=s policy not to issue opening permits unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction. The newly placed concrete surface/base will require placement of dowel bars drilled and grouted into the existing concrete pavement (Figure 2). All pavement cuts, including the tie bars, shall meet City regulations for such work. In addition, all cuts into recently reconstructed streets shall meet all other special City guidelines issued by CDOT/CCD. The City=s special guidelines are included in Appendix B attached at the back of these regulations. Information regarding recently reconstructed streets may be obtained from CDOT/OUC.

3. For all streets which have been resurfaced in the last three (3) years, it is the City=s policy not to issue permits unless such work is determined to be emergency repairs or other work considered necessary and unforeseen before the time of resurfacing. All cuts into recently resurfaced streets shall meet special resurfacing and all other City guidelines issued by CDOT/CCD. The City=s special guidelines are included in Appendix B attached at the back of these regulations. Information regarding recently resurfaced streets may be obtained from CDOT/OUC.

4. In residential streets, the existing pavement section may consist of a few inches of asphalt underlain by paving bricks, concrete, BAM, PAM, and/or any combination thereof. Regardless of the existing pavement composition, base restoration shall

consist of 7 inches of P.C.C. base in accordance with the SSRBC. In residential streets where the existing pavement section consists of asphalt surface over Crushed Stone base, the base material may be replaced with at least 12 inches of compacted Crushed Stone base. Prior to the placement of the Crushed Stone base material, the Permittee should have the existing pavement section inspected and approved by CDOT/CCD inspector verifying the existing pavement section to be flexible pavement consisting of only asphalt and Crushed Stone base material.

If the existing asphalt thickness is equal to or greater than 2 2 inches to the top of the base, restoration shall be to a level which 2 2 inches below the adjacent existing street surface grade. If the existing asphalt thickness is less than 2 2 inches of the top of the base, restoration shall be to the bottom of the existing asphalt or at a level 2 inches below the adjacent street surface grade, whichever is lower. If high early strength concrete is used, the concrete shall be protected for 3 days after placement or until the time the concrete has achieved a compressive strength of 3,000 psi as evidenced from concrete cylinder break tests. If regular concrete is used, the concrete shall be protected for 7 days after placement.

5. When the street surface consists of special treatment such as granite pavers, brick pavers, etc., the replacement shall be with the same material and shall match existing conditions unless otherwise previously approved in writing by CDOT/CCD.

6. The existing street pavement, consisting of asphalt surface or concrete surface or asphalt surface underlain by a base of concrete, paving blocks, bricks, etc. and/or any combination thereof, shall be machine cut in a perpendicular clean joint between the portion of the pavement to be removed and that to be left in place to prevent damage to the remaining pavement. Where existing street surface consists of special treatment such as granite pavers, bricks, etc., the surface granite pavers/bricks should be carefully removed and stored for later replacement to match existing conditions. If any portion of the pavement which is to be left in place is damaged, the pavement shall be repaired or replaced in a manner and to the extent as directed by CDOT/CCD.

7. Asphalt to be used for final street surface restoration shall conform to the requirements of the SSRBC, Bituminous Concrete Class I. The bituminous concrete shall be Surface Course, Mixture D (Skid Resistant) in arterial streets and Surface Course, Mixture D or Mixture C in residential streets. The Bituminous Concrete Binder Course where used shall be Mixture B. The wearing surface shall be finished level and flush with the adjacent existing street surface. When more than one pavement opening is made on a single permit and the openings are sixteen feet or less apart, the existing wearing course in between shall be removed and restored integrally with the opening wearing course restoration. If the pavement opening is within three feet of the edge of pavement or gutter pan, the surface course in between shall be removed and restored integrally with the opening wearing course restoration.

8. The pavement base and surface course shall be saw-cut or milled and restored a minimum of 12 inches beyond the limits of the base excavation. (See Figure 2.)

9. When street openings are made in full depth concrete pavements, the pavement shall be restored with concrete to the same depth, and broom finished as the surrounding pavement.

10. All pavement markings including thermoplastic lane dividers, etc. removed during construction shall be replaced by the Permittee.

11. During the winter months, concrete base shall be installed whenever weather conditions allow. The concrete should be protected from the cold weather in accordance with Articles 720.12 (c) and 720.13 (c) of the SSRBC. When hot asphalt material is unavailable, cold mixture asphalt will be utilized as a wearing surface. This temporary pavement surface must be maintained throughout the winter season. This temporary restoration shall be removed and replaced with permanent hot asphalt restoration within forty-five days of the availability of hot material in the spring. Except during these winter operations, concrete base restorations shall be accomplished within ten working days after the work that necessitated the opening is completed. Surface restoration is to be completed within seven days after curing, unless specifically exempted by CDOT/CCD to coordinate with other adjacent paving plans.

12. During winter months when full depth concrete pavements are removed (pavement, alleys, sidewalks, etc.) concrete pavement restoration shall occur as weather condition allows. The concrete should be protected from the cold weather in accordance with Articles 720.12(c) and 720.13(c) of the SSRBC. During the winter operation, concrete pavement restoration shall be accomplished within ten working days after the work that necessitated the opening is completed

**6D. Viaduct/Bridge Pavements**

Design and repairs to the viaduct bridge pavements including approach slabs shall be submitted to CDOT/BOBT for review and approval prior to the restart of any work.

**6E. Median/Cul-de-sacs/Planters/Traffic Devices**

In those instances, where the facilities are proposed to cross under the existing medians, cul-de-sacs, planters, traffic devices or other structures, the Permittee=s construction method should protect these existing structures from damage. The Permittee and any licensee/s working for or in concert with the Permittee will be responsible for repairing and/or replacing the existing medians, cul-de-sacs, planters, traffic devices and other structures as well as any trees or other plantings affected during the course of the construction, at his/her own expense, to the satisfaction of CDOT/CCD.

# Chapter 7

## Work Zone Traffic Control

### 7A. Fundamental Principles

Traffic safety in construction zones should be a high priority element of every project from planning through design and construction. Similarly, maintenance and planned construction work should be planned and conducted with the safety of the motorist, pedestrian, and worker kept in mind at all times.

### 7B. Work Zone Traffic Control General Policies

1. Traffic movement should be inhibited as little as practicable.

   Traffic control in work sites should be designed on the assumption that motorists will only reduce their speeds if they clearly perceive a need to do so. Reduced speed zoning should be avoided as much as practicable.

   Frequent and abrupt changes in geometric such as lane narrowing, dropped lanes, or main roadway transitions requiring rapid maneuvers should be avoided.

   Provisions should be made for the safe operation of work vehicles, particularly on high speed, high volume roadways.

   Roadway occupancy and work completion time should be minimized to reduce exposure to potential hazards.

2. Motorists should be guided in a clear and positive manner while approaching and traversing construction and maintenance work areas.

   Adequate warning, delineation, and channeling by means of proper pavement marking, signs, or use of other devices which are effective under varying conditions of light and weather should be provided to assure the motorists of positive guidance in advance of and through the work area.

   Inappropriate markings should be removed to eliminate any misleading cues to motorists under all conditions of light and weather. On short term maintenance projects it may be necessary to leave existing markings in place; if so, special attention must be paid to providing additional guidance by other traffic control measures.

   Flagging can provide positive guidance to the motorist traversing the work area. Flagging should only be employed when required to control traffic or when all other methods of traffic control are inadequate to warn and direct drivers.
   All traffic control devices should be removed immediately when they are no longer needed.

## 7C. Definition of Traffic Control Zone Components

When traffic is affected by construction, maintenance, utility, or similar operations, traffic control is needed to safely guide and protect motorists, pedestrians, and workers in a traffic control zone. The traffic control zone is the distance between the first advance warning sign and the point beyond the work area where traffic is no longer affected. (See Figure 9.)

Most Traffic control zones can be divided into the following parts:

1. Advance Warning Area
2. Transition Area
3. Buffer Space
4. Work Area
5. Termination Area

### 7C.1 Advance Warning Area

An advance warning area is necessary for all traffic control zones because drivers need to know what to expect. Before reaching the work area, drivers should have enough time to alter their driving patterns. The advance warning area may vary from a series of signs starting in advance of the work area to a single sign or flashing lights on a vehicle (See Figures 11 through 16).

The advance warning area, from the first sign to the start of the next area, should be long enough to give the motorists adequate time to respond to the conditions. For most operations, the length can be:

500 ft. to 2 mile for freeways or expressways.
350 ft. for most other roadways or open highway conditions.
At least 200 ft. for urban streets.

### 7C.2 Transition Area

When work is performed within one or more traveled lanes, lane closure(s) is required. In the transition area, traffic is channeled from the normal highway lanes to the path required to move traffic around the work area. The transition area contains the tapers which are used to close lanes (See Figures 11 through 16).

The transition area should be obvious to drivers. The correct path should be clearly marked with channeling devices and pavement markings so drivers will not make a mistake and follow the old path.

The length of taper used to close a lane is determined by the speed of traffic and the width of the lane to be closed (the lateral distance that traffic is shifted). The following table shows the taper lengths, the recommended number, and the spacing of channeling devices for various speeds and width of closing:

| Speed Limit M.P.H. | Taper Length — Lane Width in Feet 10 | 11 | 12 | Number of Channeling Devices for Taper | Spacing of Devices Along Taper in Feet |
|---|---|---|---|---|---|
| 20 | 70 | 75 | 80 | 5 | 20 |
| 25 | 105 | 115 | 125 | 6 | 25 |
| 30 | 150 | 165 | 180 | 7 | 20 |
| 35 | 205 | 225 | 245 | 8 | 35 |
| 40 | 270 | 295 | 320 | 9 | 40 |
| 45 | 450 | 495 | 540 | 13 | 45 |
| 50 | 500 | 550 | 600 | 13 | 50 |
| 55 | 550 | 605 | 660 | 13 | 55 |

## 7C.3 Buffer Space

The buffer space is the open or unoccupied space between the transition and work area (See Figure 9). With a moving operation, the buffer space is the space between the shadow vehicle, if one is used, and the work vehicle.

The buffer space provides a margin of safety for both traffic and workers. If a driver does not see the advance warning or fails to negotiate the transition, a buffer space provides room to stop before the work area. It is important that the buffer space be free of equipment, workers, materials, and workers= vehicles. When designing or setting out a Traffic Control Plan, place channeling devices along the edge of the buffer space. The suggested spacing in feet is equal to two times the posted speed limit.

## 7C.4 Work area

The work area is that portion of the roadway which contains the work activity and is closed to traffic and set aside for exclusive use by works, equipment, and construction materials. Work area may remain in fixed locations or may move as work progresses. An empty buffer space may be included at the upstream end. The work area is usually delineated by channeling devices or shielded by barriers to exclude traffic and pedestrians.

Work areas that remain overnight have a greater need for delineation than daytime operations.

Every feasible effort should be made to minimize conflicts.

## 7C.5 Termination Area

The termination area provides a short distance for traffic to clear the work area and to return to the normal traffic lanes.

Avoid Agaps≅ in the traffic control that may falsely indicate to drivers that they have passed the work area.

NOTE: The information provided in this ASection 5-Work Zone Traffic Control≅ is general and brief and the ATraffic Control Plan Schemes≅ shown in Figures 11 through 16 are a few that are normally used and may not apply to various other street/roadway types. For detailed Specifications for Temporary Traffic Controls for construction and/or maintenance, refer to the Manual on Uniform Traffic Control Devices (MUTCD) 1993 Edition, Revision 3. Prior to any construction and/or maintenance work in the Public Way, the Permittee must submit a ATraffic Control Plan Scheme≅ to CDOT/BOT for review and approval. CDOT/BOT is located at 30 North LaSalle Street, Suite 400.

## Chapter 8

## Compliance with Environmental Law

### 8A. General

All Permittees shall comply with all laws relating to environmental matters including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials, special wastes or other contaminants including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. ə9601 et seq.), the Hazardous Material Transportation Act (42 U.S.C.ə 1801 et seq.), the Resource Act (33 U.S.C. ə 1251 et seq.), the Clean Air Act (42 U.S.C. ə 7401 et seq.), the Toxic Substances Control Act of 1986 (15 U.S.C. ə 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. ə 300f), the Occupational Safety and Health Act of 1970 (29 U.S.C. ə 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. ə 11001 et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.), and the Chicago Municipal Code, each as amended or supplemented, and any analogous future or present state or Federal statues, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive regulating, relating to or imposing liability or standards or conduct concerning any Hazardous Materials or by the Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions (collectively "Environmental Laws").

If any of the above laws require the Permittee to file any notice or report of a release or threatened release of Hazardous Materials or special wastes or mitigation of Hazardous Materials or special wastes on, under or about any premises or Public Ways used by Permittee, the Permittee shall provide a copy of such report or notice to the City. In the event of a release or threatened release of or mitigation of Hazardous Materials, special waste or other contaminants into the environment by Permittee or its Contractors or in the event any claim, demand, action or notice is made against the Permittee regarding the Permittee=s failure or alleged failure to comply with any of the above environmental laws, in regard to activities related to Permittee=s system, Permittee shall immediately notify the City in writing and shall provide the City with copies of any written claims, demands, notices or actions so made. Permittee shall comply with the rules and regulations stated in any applicable mandatory recycling ordinance enacted or amended by the City Council of the City of Chicago.

If Permittee fails to comply with any of the above referenced environmental laws, the City may terminate the Permit in accordance with the termination and/or revocation provisions of the Permit.

For purposes of this Section 8, the following definitions shall apply:

"Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) petroleum or crude oil or any fraction thereof, natural gas, special nuclear materials; and by product materials regulated under the Atomic Energy Act (42 U.S.C ə 2011, et.

seq.), pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. ə 136 et. seq.) and any hazardous waste, toxic or dangerous substance or related material, including any material defined or treated as "hazardous substance," "hazardous waste," "toxic substance," or contaminant (or comparable term) under any of the Environmental Laws.

"Special Wastes" means those substances as defined in Section 415 ILCS 5/3.45 of the Illinois Environmental Protection Act, and as further referred to in Section 809.13 of 35 Illinois Code, Subtitle G, ch.1.

**8B. Environmental Permits**

1. To the extent required by the Environmental Laws, Permittee must keep current throughout the term of a Permit, waste hauling, Special Waste hauling, disposal permits and insurance certificates required by Federal, State, City or any local government body or agency pursuant to any Environmental Law, if any, and at the request of the City, show evidence thereof.

2. When requested by the City, the Permittee shall submit copies of any hauling permits required by any Environmental Law. To the extent requested by the City, copies of all permits that require periodic renewal must be forwarded to the City throughout the duration of a Permit. Non-compliance with this requirement may be cause for termination of a Permit.

3. Environmental Records and Reports: Permittee shall be required to prepare and maintain proper, accurate and complete records of accounts of all transactions released to its operation of the Public Way, including, but not limited to, the following:

    a. Vehicle Maintenance records
    b. Safety and accident reports
    c. IEPA or OSHA manifests
    d. Disposal records, including disposal site used, date, truck number and disposal weight.
    e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

**8C. Disposal of Materials, Construction Debris, Soil and Waste**

1. If during excavation of trenches for installation of the proposed facilities, the Permittee encounters contaminated materials, Permittee shall be responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Contractor does not relieve the Permittee from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes shall be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. Failure to identify disposal site (s) for materials, construction debris, soil and other wastes or to submit such information when requested by the City may result in the revocation of all Permits held by the Permittee and other penalties authorized by the Code, or these regulations or applicable law.

2. If the Permittee decides that he/she will not perform the remediation and would like to forgo further installation and/or restore their facilities, the Permittee will still be liable to dispose of the materials already removed within the Public Way in accordance with all Environmental laws. The City will not be responsible or liable for any cost incurred by the Permittee.

3. At the request of the City, the Permittee shall provide the Commissioner or his/her designated representative with copies of all load tickets, manifests, bills or lading, scale tickets and other pertinent documents. When requested by the City, Permittee shall provide copies of all permits and/or licenses for the proposed transfer station and/or landfill. In the event that the transfer station and/or landfill proposed for use by the Permittee does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, Permittee will replace the transfer station and/or landfill. If the Permittee disposes of materials, construction debris, soil or other wastes at a site which is not property permitted, the Permittee shall be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.

4. The Permittee is fully responsible for compliance with all Environmental Laws.

5. The Permittee shall notify the City within 24 hours of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Claims") by any governmental body or regulatory agency against the Permittee by any third party relating to the loading, hauling or disposal of material, construction debris, soil or other wastes in connection with the Permittee=s systems or Installation. The Permittee will provide evidence to the City that any such Claim has been addressed to the satisfaction of the issuer or initiator of any such Claim.

6. Permittee shall provide the City with reasonable prior written notice of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil or other wastes related to its System or Installation in which Permittee is asked to participate.

7. Non-compliance with these terms and conditions may be used by the City as grounds for termination of a Permit.

**8D. Equipment and Environmental Control During Transport**

Permittee shall haul any materials, construction debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials, construction debris, soil or other wastes shall be designed to prevent spillage during the hauling operation. Permittee=s equipment shall fully comply with all City, state and federal regulations, Laws and ordinances pertaining to size, load weight, safety and any Environmental Laws.

**8E. Indemnification**

Section 3B.11 of these Regulations applies to any violation of Environmental Laws by Permittee or its Contractors.

**8F. Environmental Controls**

Permittee shall comply with all Environmental Laws with respect to the elimination of excessive noise and pollution of air and water due to its construction and other operations. Permittee shall minimize the noise of heavy construction equipment and control in city streets and properties, in accordance with ordinances of the City and other City departments. Permittee shall not discharge oily, greasy chemical, hazardous to toxic wastes into waterways and City sewers.

**8G. Hazardous Materials**

(a) In the event that a Permittee encounters asbestos or toxic or hazardous materials not caused by or introduced by Permittee or its Contractors, Permittee shall, before disturbing such materials, immediately notify the City and any owner of any facility in which Permittee may be performing work (AOwner≅) of the location thereof, and as to whether it is feasible to re-route or otherwise work so as to avoid such materials. If such re-routing is feasible Permittee or the owner shall do so at no cost to the City. To the extent that Permittee exacerbates any existing environmental condition, Permittee shall be liable for any additional cost of abatement so caused by Permittee activities.

(b) If such re-routing or avoidance is not feasible in the judgment of the City, and such materials must be disturbed or relocated to complete such work, then Permittee shall perform or cause one or more of its Contractors or the Owner (including, if necessary, a new, specialized subcontractor then retained with the consent and approval of the City for such purpose) to perform such abatement, containment, treatment or removal and disposal of such materials as may be required by law, such to the provisions of paragraph (c) of this Section.

(c) In the undertaking of such abatement, treatment, containment, removal or disposition, Permittee, or such person employed by Permittee:

(i) Shall notify the City and the Owner at least 72 hours prior to the start of removal and disposal of any hazardous materials;

(ii) shall be certified as a hazardous materials removal firm by the Environmental Protection Agency and all state or local agencies.

(iii) shall carry such insurance coverage as may be required by the City=s Department of Risk Management naming the City as an additional insured; and

(iv) shall provide such indemnification and documentation as required by the City.

# Chapter 9

## Chicago Freight and Trolley Tunnels

### 9A. General

The Chicago Freight Tunnels under the Public Way and the Trolley Tunnels to the extent of City interest therein, are City-owned property and represent unique environments. For the purpose of these regulations, however, the Commissioner has determined that Chicago Freight Tunnels under the Public Way shall be treated as the Public Way subject to the provisions of this Chapter 9. If any Permittee desires to use portions of the Chicago Freight Tunnels or the Trolley Tunnels to install permanent facilities the Permittee will require approval and permits from the Commissioner prior to the installation of the proposed system. The Tunnels or specific portions of any of the Tunnels may in the future become a scarce resource. In order to preserve the availability of the Tunnels for future Permittees and City use, a Permittee may be required, by the terms of a Permit to restrict the size and location of its facilities.

CDOT reserves the right to impose fees specifically for the use of (i) the Tunnels and (ii) the existing sleeves under the bulkheads in the Chicago Freight and Trolley Tunnels installed by the City under certain crossings of the Chicago Rivers, so long as such fees are applied in a nondiscriminatory and reasonable fashion to other similar users and are consistent with then current law; provided that with regard to the Freight Tunnels no such specific fees will be imposed on Telecommunications Providers which are subject to and are paying the infrastructure maintenance fee imposed pursuant to Chapter 3-75 of the Code.

### 9B. Tunnel Agreement Required

Prior to the issuance of any permits, each Permittee seeking to use any portion of any of the Tunnels shall enter into such additional agreements as may be required by CDOT regarding construction, installation, maintenance, inspection, insurance and other related aspects of use of such portions of such Tunnels. Any disputes regarding use of any portion of any of the Tunnels shall be resolved by the Commissioner and other concerned City departments.

### 9C. No City Obligation

The City will not be obligated to pay any amounts to Permittee for any cost of preparation, maintenance or improvement to the Chicago Freight Tunnels or the Trolley Tunnels and each Permittee is deemed to expressly waive all right to any such contributions. Any use of the Chicago Freight Tunnels or the Trolley Tunnels shall be solely at Permittee=s risk and the City shall not be liable in any way therefor.

### 9D. Maintenance

Each Permittee shall maintain in conjunction with other users those portions of the Chicago Freight Tunnel and the Trolley Tunnels through which each Permittee=s system is placed or operates or which is affected directly or indirectly by such operations, if any, free of hazards to the satisfaction of the City, and will keep such portions passable for purposes of inspection by City personnel or its designated agents.

**9E. Cooperation**

Each Permittee shall provide reasonable cooperation to the City, its designated agents and other users of the Tunnels in which such Permittee=s facilities are located for installation, construction, inspection and maintenance and shall not interfere with such activities. All of the Permittee=s activities in the Tunnels shall be performed in accordance with any tunnel agreement to which such Permittee is a party, any permit issued by the Commissioner and any restrictions of the use of the Tunnels established by the Commissioner by regulation or otherwise.

APPENDIX A: FIGURES

# DEPARTMENT OF TRANSPORTATION
# BUREAU OF INSPECTIONS
# GUIDELINES/CRITERIA FOR AUTHORIZATION FOR CONSTRUCTION IN THE PUBLIC WAY

Provided below are the Department of Transportation=s guidelines to which all parties (governmental agencies, utilities, private companies, private individuals, etc.) must adhere when constructing within the public way. This information is not to be considered all-inclusive or an incorporation of other requirements that might be set forth concurrently by other City agencies.

**PERMITS**: All work in the public way of the City of Chicago requires a permit from the Department of Transportation, Bureau of Inspections, Division of Construction Compliance (Room 804, City Hall). Permits are required for work by all governmental agencies, utilities, not-for-profit associations, private contractors, individuals, etc. No pavement opening permit will be issued for any work in the public way that has been resurfaced in the last three (3) years or reconstructed in the last seven (7) years unless such work is determined to be an emergency repair or other work deemed necessary by the Commissioner of the Chicago Department of Transportation. All pavement cuts shall meet City of Chicago Standard guidelines for such work; in addition all cuts to recently resurfaced or reconstructed streets shall meet special City guidelines issued by the Construction Compliance Division.

**CITYWIDE UTILITY ALERT NETWORK (CUAN)**: All pavement openings in the public way require a 48-hour minimum prior notice to the City-Wide Utility Alert Network (744-7000) located in Suite 1101, 30 N. LaSalle St. CUAN is a 24 - hour service network whose purpose is to notify all CUAN participants of proposed openings in the public way. The present members are Commonwealth Edison, People Gas, Ameritech, Chicago Cable, MCI-Metro (ATS /Western Union), WorldCom (MFS, Inc.), 21st Century Cable, Prime Cable, 911 Emergency Communications, LCI-Telecommunications, CCTS-Telecommunications, Sprint, AT&T, Department of Sewers, Water, and Streets and Sanitation.

**OFFICE OF UNDERGROUND COORDINATION**: The Office of Underground Coordination (OUC) is the distribution agency within the Chicago Department of Transportation, Bureau of Inspections, for all requests regarding utility information and the review/approval of construction work in or adjacent to the public way, including large projects with deep excavations and penetrations, such as foundations (piles, caisson, etc.), earth retention systems or major piping installations. The OUC is responsible for the protection of the City=s surface and subsurface infrastructure from damage due to planned and programmed construction projects. These projects must be processed through the OUC, prior to the start of construction and prior to the issuance of permits.

The OUC is made up of both city agencies and private entities which review construction documents to determine the effect these proposed projects will have on their existing

facilities. Any disruption, adjustments and/or relocation of their facilities, when affected, are reviewed, commented upon and authorized prior to OUC approval and permitting.

The above criteria/guidelines are prerequisites to the issuance of a private opening permit; without corroboration of completion of review by the Secretary (or his designate) or the Office of Underground Coordination, a pavement opening permit may not be issued.

APPENDIX C: SIDEWALK RAMP GUIDELINES

TABLE OF CONTENTS

1. Ramps shall be located as shown on plans in alignment with normal sidewalk and/or crosswalk and shall have sufficient curb length at corner radius to prevent vehicular encroachment.

2. Curb ramps at marked crossings shall be wholly contained within the markings excluding any flared sides.

3. The desirable maximum slope of ramp for Types A & B shall be 1:12. In unusual situations, the absolute maximum slope of the ramp shall be 1:8, however, if the landing area between the top of the ramp and an obstruction is less than 48 inches, then the absolute maximum slope shall be 1:12.

4. The desirable maximum slope of the side flare for Type B shall be 1:10, and the minimum width of the side flare shall be one(1) foot.

5. Ramps shall be constructed of P.C. Concrete in accordance with Article 624 of the Standard Specifications, except a textured finish will be required and steel forms will not be permitted.

6. The thickness of Ramps shall be the same as the adjacent sidewalks with a minimum thickness of 5 inches, except that the minimum ramp thickness shall be 8 inches where shown on the plans. The ramp areas will be determined by measuring the width and length on a horizontal plane. The average widths will be measured to include the side curbs or flares (edge treatment); and the length will be measured horizontally from the top of the bottom of the ramp.

7. :≅ Performed Joint Filler (P.J.F.) shall be installed on the side of ramps where the ramp abuts adjacent sidewalks in accordance with the ADetail of Portland Cement Concrete Sidewalk Construction.≅

8. Ramp texturing is to be done with a expanded metal grate placed and removed from wet concrete to leave a diamond pattern as shown. The long axis of the diamond pattern shall be perpendicular to the curb. Grooves shall be χ" deep and 3" wide. See Typical Ramp Texture Detail on page 82.

9. In no case shall transverse expansion joints, that are constructed in curbs and gutters at or near corner radius, be located within the handicap ramp areas.

10. Where Performed Joint Filler (P.J.F.) is installed against a curbed surface, the Contractor shall use a flexible filler in accordance with Sections 503.07 and 715 of The Standard Specifications.

# SPECIFICATIONS

Description. This work shall consist of constructing Portland Cement Concrete (PCC) Sidewalk Ramps for persons with disabilities at locations shown in the City details. Except as herein noted, this work shall conform to Section 624 of the Illinois Department of Transportation IDOT Standard Specifications.

Forms. The use of steel forms will not be permitted.

Sand Cushion, 6 Inch. A six (6) inch sand cushion shall be constructed as a base beneath new ramps. New ramps are defined as PCC ramps replacing gravel, grass, asphalt or other non-concrete surfaces. PCC ramp replacements will not require a sand cushion when constructed on the existing subgrade.

The Sand Cushion shall consist of furnishing, transporting, and placing fine aggregate having an FA2 gradation conforming to Section 703 of the IDOT Standard Specifications. The sand cushion shall be constructed upon a previously prepared subgrade and compacted to 95% of maximum laboratory density.

Sidewalk Ramps for Persons With Disabilities. Unless directed otherwise, sidewalk ramps for persons with disabilities shall be constructed at the locations shown in the standard details. This work shall be in accordance with the applicable portion of Sections 512 and 624 of the IDOT Standard Specifications and the CDOT Standard Details for Construction of Sidewalk Ramps for persons with disabilities.

Final Finish. Instead of a final finish by brushing with a whitewash brush, the final finish after the water sheen has disappeared shall be accomplished by using an expanded metal grate to texture and create a non-slip surface in accordance with General Note 8 and the details shown for Ramp Construction.

Protective Surface Treatment. A protective surface treatment shall be applied in accordance with Article 408.23 of the IDOT Standard Specifications.